

Shephali/sp

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 170 OF 2017**

IN

TESTAMENTARY PETITION NO. 491 OF 2013

SANJAY KHADIWALA

aged 45 years residing at 564, M.G. Road,
Indore, Madhya Pradesh, Sole Executor
under the Last Will

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APPLICANT

~ VERSUS ~

1. MANEESH BAWA

son of Late Shri Randhir S Bhalla

2. SUMMET BAWA

son of Late Shri Randhir S Bhalla

3. ARCHANA BHALLA

Wife of Late Shri Randhir S Bhalla,
All permanent residence of New Delhi,
residing at S-322A, Panchsheel Park,
New Delhi 110 017 and whilst in
Mumbai residing at BPS Estate (Bawa
Parduman Singh Estate), Devidayal
Road, Mulund (West),
Mumbai 400 080.

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RESPONDENTS

APPEARANCES

FOR THE APPLICANT

**Mr Neerav Merchant, with Mr Ishwar
Pahuja i/b Thakordas &
Madgavkar.**

FOR THE RESPONDENTS **Mr Aspi Chinoy, Senior Advocate,**
*with Mr Vishal Kanade, Mr Rohan
Dakshini, Ms Nikita Mishra, Ms
Sanaea Laskari, i/b M/s Federal &
Rashmikant.*

CORAM : G.S.Patel, J.

DATED : 16th JULY 2018

ORAL JUDGMENT:

1. On 27th June 2018 I allowed Chamber Summons (L) No. 36 of 2018 at the instance of third parties seeking impleadment in the present Motion, filed by the original Probate Petitioner, Sanjay Khadiwala (“**Khadiwala**”), seeking a restoration of the Testamentary Petition after a delay of 780 days. The applicants in the Chamber Summons said that the entire Probate Petition was fraudulent and that Khadiwala was seeking to usurp property that belonged to an ancestor of Applicants (“**the Bhalla-Bawa family**”).

2. The property in dispute is one: it is an enormous stretch of land of some 16,00,389.34 sq yards at Mulund. The Bhalla-Bawa family says that this land belonged to their ancestor Randhirsingh Bhalla (“**Bhalla**”). Born on 5th April 1927, he was a resident of Delhi. He died on 29th May 2014. The Bhalla-Bawa family says Khadiwala has created an entirely fictitious testator named ‘Randhirsinh Bhala’, alleged to have been born on 9th June 1933 with no family or lineal descendants, and who supposedly died in Indore on 25th October 2012. That is the dispute. Khadiwala claims the Mulund property belonged to this Bhala, whose Will he

propounds. The Bhalla-Bawa family says that Khadiwala's testator, Bhala, is an entirely concocted figment and a myth. He never existed. There was no such person. That is the dispute.

3. The question is whether I should restore this Motion or not. First, there is the delay and the fact that the Petition was dismissed by conditional order of 5th May 2015 for non-removal of office objections. The only explanation in the Affidavit in Support is to be found in paragraphs 5, 6 and 7 and this is how those paragraphs read:

5. I say that though the Order was passed on 5th May 2015 further steps in the matter could not be taken by me since I was in the process of gathering the papers to support an Application for compliance with the requisitions.

6. I say that the Office of the Prothonotary and Senior Master have taken out requisitions dated 2nd May 2013 and which for the sake of ready reference are set out herein below alongwith the current status in the matter qua the requisitions.

Particulars of Requisitions	Remarks/Status
Office Translation of Will being the Preliminary Objection.	Translated Copy is ready

7. I say that in view of the Order passed by this Hon'ble Court dismissing the Petition, no steps for removal of the requisitions could be taken, since the Petition was not on the file of this Hon'ble Court since the day of the Order passed by this Hon'ble Court.

4. On their own, these paragraphs are of little or no coherence. If the only objection was that a translation of the Will was required,

then there was no ‘gathering of papers’ needed. It is pointless to say that objections could not be removed since the Petition had been dismissed. This is a Catch-22 that is often put out, but it is entirely meaningless. An advocate has to make only a routine application, even on a praecipe, and leave is granted to remove departmental objections. None of this explains the delay of 780 days.

5. In the ordinary course, and had this been an ordinary matter, perhaps an order of costs would have sufficed. But this is no ordinary matter, and there is no ordinary order of costs that can be made on this. For the expression ‘gathering the papers’ takes on a more sinister turn when one sees what precisely Khadiwala is supposed to have done.

6. In my previous order, I said that the considerable filings in the Chamber Summons would be read into the present Motion, and this is why I will therefore refer to those filings today. To begin with, Khadiwala says very different things about his relationship with the alleged deceased, Bhala. He first says that he, Khadiwala, was Bhala’s nephew; that the alleged deceased was his uncle. This story changes to his being a ‘caregiver’, the expression used in the alleged Will. This is never explained. Next, we now find that possibly every single document that Khadiwala ‘gathered’ turns out, albeit *prima facie*, to be utterly false. This is not a question of this or that document being merely discrepant. This is a case where document after document after document is demonstrated to be entirely concocted. A few examples should suffice.

7. Khadiwala claims that there was a Voter ID Card No. MP/37/271/384158 in the name of his purported testator Bhala from the Indore 271 constituency issued on 2nd December 1996. The Mulund Police Station and the Collector and District Election Officer, Indore have confirmed that no such Voter ID has ever been issued for that legislative assembly.

8. Khadiwala claims that this testator had a membership of the Yashwant Club, Membership No. R129. That club in Indore has confirmed in writing that no one named 'Randhirsinh Bhala' was ever a member of that club. Membership Card No. R129 is not on their records. Significantly the photograph on the card is that of one Laxmandas Uttamchandani also known as Laxmandas Mulchandani, an ex-member, who died on 24th October 2012. This Uttamchandani, as we shall see, comes to play quite a significant role in Khadiwala's documentation.

9. There is a PAN Card No. BGPPB1879J said to have been issued in the name of Khadiwala's alleged testator. The NSDL e-governance report shows that this PAN Card was opened *inter alia* on the basis of (i) the fake Voter ID Card; (ii) an incorrect address at Saket Square which, as it happens, was the address of Laxmandas Uttamchandani who ran a tourism business from there and which his wife confirms; (iii) on the basis of a mobile No. 9301301826. This mobile is apparently in the name of one Darash Kevat a resident of Chattisgarh; and (iv) a photo ID which is in fact none other than the hapless late Laxmandas Uttamchandani.

10. There is a passport which I have previously taken into custody. There is a discrepancy as to the date of birth.

11. Then comes the question of the death certificate which shows the alleged deceased's address at 526, Patrakar Colony, Indore, MP. Police investigations have found that the Municipal Corporation of Indore issued the death certificate on an application from Khadiwala himself, one that annexed the previously mentioned Voter ID and PAN Card. In the Affidavits submitted along with the application, Khadiwala said that this Randhirsinh was his uncle (father's sister husband). This is a very precise statement of the nature of kinship. It is not the use of the word 'uncle' in the vernacular as is so common in this country. Indeed there is nothing regarding the death of the alleged Bhala that cannot be tied to an application made by Khadiwala himself and all of it is based on documents that are demonstrably false.

12. Throughout, Khadiwala has used Laxmandas Mulchandani's/ Uttamchandani's photograph for making representations to various authorities.

13. This litany of fabrication and preparation of utterly bogus documents goes on for several pages in the Affidavit in Support of the Chamber Summons which I am treating as an Affidavit in Reply to the present Notice of Motion. What does Khadiwala say in response to this? The Affidavits in the Chamber Summons went to the stage of a sur-rejoinder. I find that in paragraph 5 of the Affidavit in Reply, Khadiwala opens by saying once again that this

Randhirsinh Bhala was his uncle; or, more accurately, that he, Khadiwala was Bhala's nephew. There is then supposed to be a family tree and this does not show Khadiwala at all. In regard to the individual facts and the para-wise reply, in a table below paragraph 18 there is a tabulated statement in regard to the some of the documents that I have mentioned above. Khadiwala accepts the correctness of what the Bhalla-Bawa family said in regard to the Voter ID, the PAN Card and the passport. As regards the membership of Yashwant Club the answer is this: '*was not a member during lifetime*'. I do not know how one can be a member after death, so perhaps the less said of this the better. As regards the photograph it simply says that the two photographs are different or not the same, and nothing more.

14. In my view this is actually sufficient in itself to completely dislodge the *bona fides* of the present Notice of Motion. This is the clearest possible admission that there are documents here that are entirely incorrect and got up. There is no denial whatsoever of what the Bhalla-Bawa family says. On the contrary, Khadiwala admits the averments by the Bhalla-Bawa family that these documents are all fabrications.

15. An application such as this is always an application seeking a relief that is both discretionary and equitable. It must be demonstrated that no prejudice will be caused if the application is allowed. When it is shown that very considerable prejudice will be caused, and that there is no possibility of the applicant being able to redress that balance or to mitigate that prejudice, then obviously relief must be denied. This is therefore not merely a case where

there is an inadequate explanation for a quite considerable delay. This is a case where the entire underlying petition is itself demonstrated to be utterly false and to which there is not even an arguable response. As Mr Chinoy for the Bhalla-Bawa family points out, it is utterly extraordinary that there should be a deceased with no relatives, no movable property, no bank account and nothing at all to his name except this gargantuan piece of land at Mulund, one that is worth today probably more than the several ransoms of multiple kings. It is quite obvious to me what is being attempted, especially given land prices in Mumbai. To seek equity, the applicant must do equity and must demonstrate equity; most of all such an applicant must demonstrate a complete cleanliness of hands. When it is shown, as it is in this case, that there is not one merely discrepant document, but a long series of consistently false documents, then I see no reason why the discretion of the Court should be exercised in favour of an Applicant like Khadiwala.

16. Ordinarily I would have dismissed this Motion and would have indeed imposed very severe costs on Khadiwala. I will do the former, but not the latter. For Khadiwala finds himself with one single piece of fortune, and that it is the fact that he has been represented by Mr Merchant, who has conducted this case with quite admirable restraint and fairness.

17. The Notice of Motion is dismissed. There will be no orders as to costs.

(G.S. PATEL, J.)