

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY & INTESTATE JURISDICTION
ORIGINATING SUMMONS NO. 120 OF 2018
IN
TESTAMENTARY SUIT NO. 14 OF 2004
IN
TESTAMENTARY PETITION NO. 80 OF 2014**

Ashita Tham & Ors	...Plaintiffs
<i>Versus</i>	
Ketan Trivedi	...Defendant

Mr Archit Jayakar, *with Trupti Khadse, i/b Jayakar & Partners, for the Plaintiffs.*
Mr Ketan Trivedi, *Administrator, is present.*

CORAM: G.S. PATEL, J
DATED: 19th July 2018

PC:-

1. What is before me is an Originating Summons. It seeks interpretation of one clause of a Will dated 20th June 2003 of one Bipin Laxmichand Gupta.

2. As the first order of business, although this is not required by the Rules, I will need the Plaintiffs to amend the Petition to include a photocopy of the Will so that in the course of preservation of

records, the Petition is complete. Amendment to be carried out within one week from today without need of reverification.

3. The Will was made by one Bipin Laxmichand Gupta (“**Gupta**”). He was married to a lady named Pushpa who died on 22nd October 2002. Gupta died on 4th September 2003. The witnesses to his Will are one Mr Santosh D Raje, an Advocate of this Court, and one Anil Vasant Sardal. The two executors named in the Will are Vasant Narayan Sardal, Anil Sardal’s father, and one Behram Ardeshir. Gupta had three sisters, Ashita Tham, Monica Oberoi and Protima Bedi. The last of these died and her only heir was her daughter Pooja Bedi. These are the three Plaintiffs before me today.

4. In his Will, Gupta listed several properties. For the purposes of this Originating Summons, we are concerned with the property in which was being run a business known as Norman Hotel. The property is at 2, Firdaus Building, 127, Marine Drive, Mumbai 400 020. Clause 6 of the Will contains a direction that the entire estate was to be made over to a charitable trust to be formed in the name of Gupta’s wife, Pushpa. Clause 2 made it clear that Gupta and Pushpa had no children and that he had not remarried after her death. Then comes Clause 3 which cuts out the three sisters, saying that Gupta did not have a good relationship with them — perhaps an understatement in view of what follows. For, in the Will itself, Gupta accuses his sisters of murdering his wife and of attempting to murder him. What is to be made of this Will is a matter for another day in another proceeding. I must only note here that I have, after several hearings, by an order dated 3rd May 2018 removed both

Vasant Sardal and Behram Ardeshir as executors and appointed Mr Ketan Trivedi as an Administrator of the estate. He is prosecuting the Petition as one for Letters of Administration with Will annexed to prove the present Will in its solemn form. Mr Raje has agreed to give evidence as an attesting witness.

5. None of this is the subject matter of the present Originating Summons. This only seeks an interpretation on the basis that the Firdaus Building premises (Norman Hotel being the name of the business) being a tenancy, these could not possibly be the subject matter of a testamentary bequest. This is absolutely correct. The law in this regard is well settled. In *Vasant Pratap Pandit v Dr Anant Trimbal Sabnis*¹ the Supreme Court made it clear that tenanted property would devolve in the manner prescribed by the Rent Control Legislation, i.e. either the Bombay Rent Act 1947 or the Maharashtra Rent Control Act 1999. It cannot go by testamentary succession. A tenancy cannot be the subject matter of a testamentary bequest or be disposed of by testamentary writing, i.e., a Will.

6. The consequence of this is that the bequest in Clause 6 of the Will at least as regards the Firdaus Building premises must necessarily fail. This will not void the Will. The Succession Act itself is clear. It is the bequest that is void, not the testamentary instrument that contains the void bequest.

¹(1994) 3 SCC 481.

7. Consequently, the Originating Summons will be disposed of with the following answers to the three questions listed:

- A) Whether the Bequest of Tenancy made by the Deceased in his purported Last Will and Testament dated 20 June 2003, whereby he sought to bequeath his share in the business (of Normans Guest House) and premises (being the Tenanted Premises) to the Charitable Trust by the name of Pushpa Gupta Charitable Trust, is valid or is void? The bequest is void.
- B) Whether, in the administration of the Estate of the Deceased, the Defendant Administrator can be permitted to take any steps pursuant to the Bequest of Tenancy and give effect to the same as per the Will of the Deceased? The learned Administrator will continue in respect of the rest of this estate but not the tenancy. The Firdaus Building tenancy will devolve in accordance with the provisions of the Maharashtra Rent Control Act 1999, and in particular Section 7(15) of that Act.
- C) For the necessary directions to the Defendant, not to take possession of the Estate of the Deceased, of the application to the No further directions are necessary. The Plaintiffs are at liberty to make such other steps as they may think fit.

Tenanted Premises and/or in landlords as they
pursuance of the Bequest of Tenancy deem appropriate. All
and/or otherwise in any manner as the contentions between
administrator of the Will of the them and the landlord
Deceased. are kept open. This is
not to be construed as
a declaration of
entitlement to the
tenancy under the
Rent Act.

8. The premises are locked. There is some controversy about who, if anyone, has the key to the premises. As I had occasion to note, one of the executors purported to deliver the keys to the Marine Drive Police Station, something that I was then, and am even now, wholly unable to understand. It is for the Plaintiffs to take such steps as are open to them in law to open the premises. I have no doubt that the landlords of the premises will be kept informed of the steps that are being taken. The Administrator has no concern with the premises themselves. It is only necessary to further clarify that this order does not extend to any movable property found in the flat. For this reason, the Plaintiffs are directed to give notice to the Administrator should they attempt to open the flat. The contents of the flat will then need to be inventoried. Those will be brought into the estate.

9. Liberty to the Administrator to seek further directions for the storage, preservation or disposal of any of the movables.

10. The Originating Summons is disposed of in these terms.
There will be no order as to costs.

(G. S. PATEL, J)