

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY AND INTESTATE JURISDICTION

TESTAMENTARY SUIT NO. 82 OF 2007

IN

TESTAMENTARY PETITION NO. 941 OF 2006

WITH

NOTICE OF MOTION NO. 23 OF 2008

AND

NOTICE OF MOTION (L) NO. 93 OF 2018

Bina Gobindram Nagpal & Ors

...Plaintiffs

Versus

Rajkumar Gobindram Nagpal

...Defendant

WITH

TESTAMENTARY PETITION NO. 380 OF 2018

WITH

CAVEAT NO. 373 OF 2017

AND

CAVEAT NO. 389 OF 2017

Rajkumar Gobindram Nagpal

...Petitioner

And

Gobindram Chuharmal Nagpal

...Deceased

Ms RC Nichani, for the Plaintiffs in TS/82/2007.

**Mr Aditya Shiralkar, with Jayesh Gawde, i/b Sujata Melekar, for the
Defendant in TS/82/2007 & Petitioner in TP/380/2018.**

CORAM: G.S. PATEL, J
DATED: 10th April 2018

PC:-

1. The Plaintiffs are the sisters of the Defendant. These are all children of the deceased one Gobindram Nagpal. The peculiar aspect of this matter is that the Will in question dated 25th August 2009 is not disputed by the Defendant at all. All that the Defendant says is that the two sisters, the Plaintiffs in Testamentary Suit No. 82 of 2007, are not entitled to Letters of Administration with Will annexed in respect of the very same Will that the Defendant himself propounds in his much later Testamentary Petition No. 380 of 2018.

2. The Caveat that the Defendant-brother filed in Testamentary Suit No. 82 of 2007 discloses absolutely no ground in regard to proof of the Will in its solemn form, i.e. due execution and attestation of the Will. It is also common ground that the executor named in the Will Mohandas T Balecha has passed away; hence, the two Petitions for Letters of Administration with Will annexed.

3. I am constrained to observe that I have absolutely no idea why the Plaintiffs have been put through the costs and trouble of a trial in this matter and *prima facie* it appears that there is no worthwhile evidence on the issues that were framed on 2nd December 2009. Issue No. 1 is whether the Plaintiffs prove that the deceased left a Will dated 25th August 2009. Issue No. 2 is whether the Plaintiffs prove that the Will was duly executed. Issue No. 3 is whether the

Plaintiffs prove that they are entitled to probate (an evident error; it should read Letters of Administration with Will annexed).

4. Issues Nos. 1 and 2 have to be answered in the affirmative because the Defendant himself propounds the very same Will. There is nothing to decide. The only question is Issue No. 3 and here the only argument by Mr Shiralkar on behalf of the Defendant is to express an apprehension that the Plaintiffs “may not administer the Will properly”. I do not pretend to understand what this is supposed to mean, if anything. If the Plaintiffs obtain a grant, they are required by law to administer the estate strictly in accordance with the Will and in no other manner. Should they attempt to do otherwise, they can always be removed as administrators but for that sufficient cause must be shown. It cannot be forgotten that it was the two Plaintiffs who came to Court as far back as in 2007 seeking Letters of Administration and their application was opposed all this time by their brother, and now he has filed his own Petition for the identical relief only in 2018, in which he propounds the very same Will. His so-called apprehension furnishes no ground whatsoever to deny the relief.

5. In a jurisdiction such as this, the only question before the Court is whether due execution and attestation of the Will are properly proved as having been done in accordance with law. A probate Court is not concerned with an interpretation of the Will except where a bequest is void, etc., for that may require the grant to be limited or restricted. Therefore, Mr Shiralkar’s submission that a particular clause confers only a life interest in respect of a particular flat is not a matter that can be addressed in a probate proceeding and

it is open to the Defendant to adopt an appropriate proceeding, whether by way of an Originating Summons or otherwise, for that relief. I will keep that liberty open to the Defendant and leave all contentions open in that regard.

6. Of course it goes without saying that having sought Letters of Administration with Will annexed, the Plaintiffs have no choice but to administer the entire estate strictly in conformity with the Will that they propound. If it is their case that the Defendant has dealt with the estate in a manner not contemplated by the Will it is for them to adopt their own independent proceedings in that regard and these contentions are also left open for being agitated in an appropriate proceeding.

7. The direct consequence of this is that the present Suit must succeed for the limited purpose of issuance of grant of Letters of Administration with Will annexed. The Suit is accordingly decreed.

8. In consequence, Testamentary Petition No. 941 of 2006 is disposed of in the foregoing terms.

9. Registry will proceed to issue grant expeditiously acting on an authenticated copy of this order. It will not raise any requisitions or objections including as to service of citation.

10. Drawn up order is dispensed with.

11. Testamentary Petition No. 380 of 2018 filed by the Defendant is not on board. By consent, Testamentary Petition No. 380 of 2018 is taken on board and called out. In view of order in Testamentary Suit No. 82 of 2007 in Testamentary Petition No. 941 of 2006, Testamentary Petition No. 380 of 2018 is dismissed as withdrawn, subject to the liberty reserved above. The two Caveats filed in Testamentary Petition No. 380 of 2018 are discharged.

12. Refund of Court Fee in accordance with the Rules.

13. All interim applications, if any, are all infructuous and are disposed of with no order as to costs.

(G. S. PATEL, J)