

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
TESTAMENTARY SUIT NO. 76 OF 2014
IN
TESTAMENTARY PETITION NO. 792 OF 2013
WITH
NOTICE OF MOTION NO. 162 OF 2014**

Mukesh T Parekh ...Plaintiff
Versus
Jiten Prabodh Bhuta ...Defendant

**AND
MISCELLANEOUS PETITION NO. 5 OF 2015
IN
TESTAMENTARY SUIT NO. 76 OF 2014
IN
TESTAMENTARY PETITION NO. 792 OF 2013**

Ms Neeta Solanki, i/b Kiran Jain & Co., for the Plaintiff.
Mr Shoaib I Menon, for the Defendant.
Mr Kunal Bhanage, for the Petitioner in MPT/5/2015.
Mr Suraj Iyer, i/b Ganesh & Co., for Respondent No. 3 in
MPT/5/2015.

CORAM: G.S. PATEL, J
DATED: 27th June 2018

PC:-

1. Mr Menon has taken instructions. He says that there are only two aspects to the estate on which there is disagreement on the part of his client, the sole Defendant. His client claims that the second floor of the bungalow in question, and which is also referenced in the Will itself, at Janki Kutir, Juhu is the self-acquired property of the sole Defendant. In other words, according to him, the Testator had no title to divest or bequeath under a testamentary instrument. This is not a matter that can be decided in a testamentary proceeding. If the Defendant claims to have title superior to that of the testator to the second floor premises, he is at liberty to adopt suitable proceedings in a Court of competent jurisdiction to obtain a declaration of his title and other suitable reliefs. Equally, the other heirs of the Testator will be entitled to contest any such proceeding on merits and all contentions are expressly kept open in that behalf.

2. Mr Menon says that in addition there are some items of gold, silver and jewellery that have not been listed in the schedule annexed to the probate Petition and that there are some bank accounts that have also been disclosed. As far as the gold is concerned, there is no mention of it in the Will and Mr Bhanage for the consenting sisters has instructions to state that the claim is entirely imaginary.

3. As regards paragraph 13 of the Affidavit in Support of the Caveat, there are four bank accounts mentioned. It is admitted that the Kotak Mahindra Bank account at serial No. 1 stood in the joint names of the deceased and his son Ajay who has consented to the

grant. The two HDFC bank accounts have been merged and also stood in the joint names of the deceased and Ajay. The Indian Bank account was in the sole name of the deceased.

4. As regards the share of the firm, M/s. Bhuta International, the deceased retired from this firm during his lifetime. The amount that he received have been taken to his capital account. The demat account is indeed shown in the schedule to the petition and as to the godown in sub-clause (f), this was sold in the father's lifetime.

5. In a probate Petition, I am only concerned with the proof of Will in its solemn form. If the Defendant has any claim to any of these properties, he may agitate them either in an administration action or otherwise, for recovery of his share in those properties. The present order will not operate as a bar to those proceedings in any form.

6. On these clarifications, Mr Menon has instructions to withdraw the Caveat. The Caveat is thus dismissed as withdrawn.

7. The Petition is now uncontested. All heirs are before the Court and in any case have been served with citation.

8. The Suit is decreed and the Petition is made absolute.

9. The Registry will issue probate on a priority basis acting on an authenticated copy of this order. It will not require issuance of any

fresh citation or notices and it will not raise any further requisitions or objections.

10. The Testamentary Petition and the Testamentary Suit are both disposed of in these terms. No costs.

11. As a result of this all miscellaneous applications are disposed of as infructuous. No costs.

(G. S. PATEL, J)