

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
TESTAMENTARY SUIT NO. 208 OF 2016
IN
TESTAMENTARY PETITION NO. 837 OF 2003**

Shobha Govindraj Naidu & Ors	...Plaintiffs
<i>Versus</i>	
Kishnan Ramaswamy Naidu	...Defendant

Mr PG Lad, with Ms Sayli Apte, for the Plaintiffs.

**CORAM: G.S. PATEL, J
DATED: 8th February 2018**

PC:-

1. Present in Court to give evidence are Dilip D Thakur, an attesting witness, and Sachin Govindraj Naidu, the 2nd Plaintiff.
2. Both are administered oath in Court in turn. Each has attested to the correctness of his evidence.
3. The attesting witness is shown a photocopy of the Will. The original is summoned from the Registry as well. Mr Thakur confirms and identifies his signature on the Will. He identifies the signature of the other attesting witness and confirms that the

Testatrix placed her thumb impression in the presence of both witnesses. The second witness's name is Mr PD Tamhane. Mr Thakur confirms that Dr Sanjay Madhusudan Vaidya, her family doctor examined the Testatrix before she signed the Will and found her to be in a disposing state of mind. To my question to him in the witness box as to the deceased's state of health he responds by saying that she was quite all right. She was only unable to sign because of the unsteadiness of her hands.

4. Mr Sachin Naidu, Plaintiff No. 2 administered oath as well. He confirms the correctness of what is stated in his Affidavit of Evidence dated 2nd June 2017.

5. The Defendant is absent. There is no cross-examination of either of these witnesses. The Suit will thus proceed in the absence of the Defendant and his Advocate.

6. The Petition was originally filed for Probate. The name of the deceased is TK Pappama Naidu. She died on 14th April 2001. She is said to have left a Will dated 25th February 1999. In this Will, made when she was 85, she appointed Mr R Govindraj, one of her sons as the sole executor. The Will is typewritten. It contains her thumb impression on each page. Her thumb impression appears on the last page and below that are the signatures of the two attesting witnesses. Then there is typewritten endorsement by Dr Viadya and his signature.

7. In paragraph 3 she mentions that her husband died on 18th July 1965. She has six living children; one daughter and five sons. One of the sons , Gopal, died before her on 10th October 1970.

8. In paragraphs 4 and 5 she say that the other children despite being well settled and having received benefits made demands on her. She thus made a bequest in favour of the original Petitioner R Govindraj Naidu absolutely. Thus the Will contained an exclusion of all other heirs. A Caveat was entered by R Krishna Naidu, one of the other sons. He denied the Will and alleged fraud, misrepresentation, unsoundness of mind and undue influence.

9. Issues were framed in this behalf on 11th April 2017 by KR Shriram J. These are set out below with my findings against each.:

Sr. No.	Issues	Finding
1.	Whether the Plaintiffs prove that the writing dated 25th February 1999 was the last Will and testament of Smt TK Pappama Naidu?	Yes
2.	Whether the Plaintiffs prove that the Testator was of sound disposing mind at the time of executing the writing dated 25th February 1999?	Yes
3.	Whether the Defendant proves that the Plaintiffs have obtained the writing dated 25th February 1999 by fraud, misrepresentation and undue influence?	No
4.	What decree? What order?	Suit Decreed

10. After the original Plaintiff died, the Petition was amended to one for Letters of Administration with Will annexed. The Defendant has not cared to contest. Having regard to the testimony of the attesting witness and the Plaintiffs, and the complete lack of opposition from the Defendant, as also the lack of any Caveat or opposition to the Will from any of the other heirs, I am satisfied that the Letters of Administration with the Will should be granted. I am aware that there are exclusion of the other heirs but the reason is supplied in the Will itself. The Supreme Court itself has held that every Will disrupts the normal line of succession. Where reasons for exclusion are shown in the Will itself, these must be given their full weightage particularly when there is no evidence laid by the Defendants or those opposing the Will to show that those reasons are not good. I note that the record reflects that notice has been given of these hearings to the Defendant. He has chosen to remain absent. The consequences follow.

11. The Suit is decreed. Letters of Administration with Will annexed is to be issued on a priority basis.

12. All concerned to act on an authenticated copy of this order.

(G. S. PATEL, J)