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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
TESTAMENTARY SUIT NO. 174 OF 2017
IN
TESTAMENTARY PETITION NO. 224 OF 2017
WITH
CAVEAT NO. 265 OF 2017**

Naresh Nathulal Pal & Ors

...Plaintiffs

Versus

Bindia Kripalani & Anr

...Defendants

Mr HV Kumarswami, *for the Plaintiffs.*

Ms Pooja Khandeparkar, *with Asfiya Cutchi, i/b KK Associates, for the Defendants.*

CORAM: G.S. PATEL, J

DATED: 4th September 2018

PC:-

1. The document which is sought to be proved is not a Will. It does not claim to be a Will. On the face of it, it is an Affidavit-cum-Declaration. In paragraph 3 at page 1, the author says that she is making this “affidavit-cum-declaration” for production before the authorities. This document supposedly bears the date of 27th May 2014 and bears the signature and rubber stamp of one Mutavalli

Gulam M, an Advocate of the Esplanade Court. There is a rubber stamp with a date of Mr NS Bhaisare, Notary, Government of India dated 9th June 2014.

2. On this basis, Mr Kumarswami contends that this satisfies the requirements of Section 63(c) of the Indian Succession Act, 1925. This is, therefore, a testamentary writing. In fact, it is not. There is no testamentary disposition in it. This is quite apart from the fact that the necessary affidavit of one of the attesting witnesses, required compulsorily to be filed along with the Petition, has never been filed. No wonder — there was no ‘attesting witness’ to begin with. Further, the endorsements by the Advocate and Notary are of different dates. If it is a testamentary writing then it is not of 27th May 2014 because on that date there is not a signature of a statutorily necessary second attesting witness on it. Yet paragraph 4 of the Petition says that the testamentary writing is dated 27th May 2014, which obviously means that on that date it was complete in all respects with execution by the Testatrix and attestation by two attesting witnesses. It was not.

3. The proposition by Mr Kumarswami is extreme and cannot be accepted. It amounts to saying that every single document that has three signatures is automatically and *ipso facto* a Will. By that reasoning, every Affidavit and filing affirmed in this Court is also potentially ‘a Will’ because it has the signature of the deponent, the signature of an Advocate and the signature of the Court Associate. The fact that every Will needs at least three signatures does not mean that any three signatures are sufficient to convert just about

any document into a Will. Three signatures do not on their own a Will make.

4. The proposition is wholly untenable and cannot possibly be accepted. This is not the intention of Section 63(c). The document must be one that is *intended* to serve as a Will and it must be signed by the Testator with that intention, whatever be the form or the language used. The Testator must ask each of the witnesses, who need not be both present at that time, to attest his or her execution of the document *as a Will* and each of the witness must attest that execution *as being the execution of a testamentary instrument*. Nothing short of this will suffice. No amount of evidence is going to be able to rectify this position.

5. Mr Kumarswami's submission that Section 63(c) does not require both attesting witnesses to be present at the same time, though correct on the face of it, is inaccurately placed. What that section requires is that each witness must see the testator sign in his presence or receive an indication of having signed it. Generally, therefore, this would mean that the Will would have two signatures of the testator, one before each witness and the date of the Will would be the date when the second signing and attestation took place. There would also be an averment in the Petition as to this chain or sequence of events. We find none of this in the present case. Urvashi has signed only once. The document she signed is an affidavit and it has a specified date. There is no second date nor a second signature by her. There is nothing to indicate that she signed it a second time in the presence of the Notary. There is nothing to suggest that she indicated to the Notary that she had previously

signed the Will. Lastly, the document must be read and understood on its face for what it purports to be and for what it purports to do. This document was in no sense a Will, but only an affidavit or declaration. It cannot by a process of legal ingenuity transform itself from a document of one nature to a document of an altogether other nature.

6. If indeed the document was to serve as a Will and the Petition was brought for that purpose, that is to say to prove the affidavit-cum-declaration 'in its solemn form' as a testamentary disposition, then one of the so-called attesting witnesses ought to have filed a supporting Affidavit. There is no explanation at all, even after an objection was raised by the department, at the time of lodging, of why this was not done.

7. It is not out of place to mention a brief background. The three petitioners were the domestic servants of one Balkrishnan Chhabda, a wealthy man and a renowned art collector, said to have acquired in his lifetime one of the most significant collections of contemporary Indian art. He was personal friends with many of India's most prominent modern artists. Urvashi was his only child. He made a Will. These servants opposed it, and Urvashi sought Letters of Administration to his estate. All this is past history. Ultimately, his Will received a grant. Urvashi died. There is a petition pending for Letters of Administration to her estate. It is in this context that the present petition was filed by the three servants, laying claim to Balkrishna's estate through Urvashi's estate, since the whole of his estate devolved on her. This tells us why such desperate attempts are being made to somehow or the other grab this estate.

8. The Testamentary Petition is dismissed. No costs.

(G. S. PATEL, J)