

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION**

APPEAL (LODG.) NO. 114 OF 2019

IN

MISC. APPLICATION (LODG.) NO. 2 OF 2018

IN

TESTAMENTARY PETITION NO. 1610 OF 2018

ALONG WITH

NOTICE OF MOTION (LODG.) NO. 256 OF 2019

Inderjeet Singh Amardeep Singh Chadha @	]	
Supremo	]	
Residing at Flat Nos. 301, 302,	]	
3 rd floor, Preetika Apartments,	]	
Saraswati Road, Santacruz (West),	]	Appellant
Mumbai – 400 054.	]	(Original Caveator)

Versus

Davinder Kaur Amardeep Singh Chadha	]	
of Mumbai, aged 62 years,	]	
Occupation : Housewife,	]	
Indian Inhabitant, Widow and legal heir of the	]	
Deceased abovenamed, residing at Flat Nos.	]	Respondent
301, 302, 3 rd floor, Preetika Apartments,	]	(Applicant in Misc.
Saraswati Road, Santacruz (West),	]	Application (L.)
Mumbai – 400 054.	]	No.2/2018

Shri P.K. Dhakephalkar, Senior Advocate with Shri Omprakash Pandey and Ms. Anneta Vasani for appellant.

Mrs. Veena Thadani with Ms. Priyanka Raul for respondent.

**CORAM : R.M. BORDE &
N.J. JAMADAR, JJ.**

**RESERVED ON : 25TH MARCH 2019
PRONOUNCED ON : 25TH APRIL 2019**

JUDGMENT (PER N.J. JAMADAR, J.) :

1) With the consent of the learned counsels for parties, heard finally at

the stage of admission itself.

2) This appeal is directed against a judgment and order passed by the learned Single Judge in Misc. Application (Lodg.) No.2 of 2018 in Testamentary Petition No.1610 of 2018, dated 15th February 2019, whereby the respondent herein came to be appointed as an Administrator in respect of the estate of the deceased Mr.Amardeep Singh Sujan Singh Chadha (referred to as 'the testator') with all rights and powers of a general administrator and subject to the control of this Court, and the appellant herein was, *inter-alia*, directed to handover the possession of the assets in his custody including M/s.Hotel Amardeep, Lodging Boarding and Restaurant and Bar, run by the appellant.

3) The appeal presents a usual feature of a man rising in life, with hard work and dedication, and leaving behind substantial property with near and dear ones and a legacy of litigation.

4) The facts leading to the appeal can be stated in brief as under :-

(a) The father of the testator Sujan Singh Chadha had started the business of M/s. Hotel Amardeep in 1946. Davinder Kaur, the respondent herein is the wife of testator Amardeep Singh Chadha. The testator and the respondent were blessed with a son-Inderjeet Singh-the appellant herein, and a daughter, Gogi. The appellant married Parmeet and has two

children : Hansmeet Kaur and Gurumair Singh. The testator was endowed with a number of properties, including :-

- (1) Hotel Amardeep situate at 12A Evergreen Building, 3rd Road, Khar (W), Mumbai – 400 052;
- (2) Unit No. 5, Vinay House, Sector 19, Vashi, New Bombay;
- (3) Flats No. 301, 302, 3rd Floor, Pritika Apartment, Saraswati Road, Santacruz (W), Mumbai – 400 054,
- (4) Flat No.101, Kusum Villa, 1st Floor, 40th Road, PPS 4 Old Khar, Mumbai – 400 052;
- (5) Land at Village Shrigan Gaon, Gantarfe, Opp. Teen Veera Dam, Survey No. 6, 13 and 4, Hissa No.2, Alibaug, District Raigad, admeasuring about 171 Gunthas;
- (6) Farm House No.50, at Village Khandale, Survey No. 109, Alibaug, District Raigad; and
- (7) Flat No.2, Sunrise Society,, Ground Floor, 5th Road, Khar, Mumbai – 400 052.

5) The appellant allegedly ill-treated the deceased testator and the respondent. It is alleged that the appellant fell in bad company and was given in to vices. As the appellant allegedly misappropriated the assets to the detriment of the interest of the testator, the testator and the respondent filed a Suit No. 423 of 2014 against the appellant and sought injunction against him. Things came to such a pass that the respondent was constrained to lodge a report against the appellant with the police.

6) As the relations between the testator and the respondent, on one

hand, and the appellant, on the other hand, were thus strained, the testator allegedly executed a registered Will, dated 29th January 2014, bequeathing all his properties, except M/s. Hotel Chenna Garden, which was already transferred to daughter Gogi by the testator in his lifetime, to the respondent. The testator thereby disinherited the appellant.

7) In the year 2015, the appellant and his wife Parmeet separated. On 27th May 2016, the appellant executed a gift deed and thereby purported to gift flat No. 301 in Preetika Apartment to Parmeet. On 30th January 2017, the appellant and Parmeet dissolved their marriage by mutual consent and obtained a decree of divorce. As per the terms of the settlement thereunder, the appellant agreed to pay Rs.7 lakh per month to Parmeet, with a further stipulation for increase by Rs.1 lakh every two years. The appellant solemnized marriage with one Sonu Pandey on 14th February 2017. In the meanwhile, the testator was hospitalized on 7th March 2017, and ultimately the testator died on 27th April 2017.

8) The appellant preferred Probate Petition No.2458 of 2017 seeking probate of the Will dated 12th April 2017. It is alleged that the appellant propounded a false and bogus Will, purported to be executed by the testator on 12th April 2017, when the testator was in a precarious state of health. The appellant and Parmeet, the first wife of the appellant, by practicing fraud, got executed a gift deed from the respondent thereby

purporting to gift flat No.101, in Kusum Villa, in favour of her grand daughter Hansmeet Kaur, and, another instrument whereby Flat No.302, in Preetika Apartment, was shown to have been gifted to Parmeet by the respondent on 18th March 2017 itself, and thereby attempted to usurp the entire estate.

9) The respondent filed caveat in Probate Petition No. 2458 of 2017. The respondent also presented petition for letters of administration No.TPL No. 971 OF 2018 in respect of the registered Will executed by the testator on 29th January 2014, whereby all the properties were bequeathed in favour of the respondent.

10) In the said Testamentary Petition No.971 of 2018, the respondent preferred the instant Misc. Petition (L.) No.2 of 2018 purportedly under Section 247 of the Indian Succession Act, 1925 (hereinafter referred to as 'the Act') for her appointment as Administrator *pendente lite* in respect of the estate of the testator. In the said application, it was alleged, *inter-alia*, that the appellant with malicious intention was trying to usurp the entire estate of the deceased. The appellant was interfering with the business of the M/s. Hotel Amardeep and continued to siphon off money from the income of the said hotel. Thus, to protect the estate of the testator, and the interest of the respondent, it was necessary to appoint an administrator *pendente lite*.

11) The appellant resisted the application by filing an affidavit in reply. The substance of the resistance put forth by the appellant was that the Will dated 12th April 2017 propounded by the appellant was the last Will and testament of the deceased testator. The respondent has levelled false allegations against the appellant at the behest of his married sister Gogi and her husband. The appellant has all along been continuously carrying on the business of M/s. Hotel Amardeep and neither the respondent was ever managing the business of M/s. Hotel Amardeep, nor she is in a condition to manage the affairs of the said business. It was pointed out that M/s. Hotel Amardeep is an ancestral property, having been acquired by the late grandfather of the appellant and it could not have been bequeathed by the testator. The allegations of siphoning off income and waste of the property attributed to the appellant were denied.

12) The learned Single Judge, after hearing the parties, was persuaded to hold that it was necessary to appoint the respondent as an Administrator *pendente lite* in respect of the estate of the testator with the rights and powers of a general administrator and subject to the control of this Court.

13) The learned Single Judge noted that large amounts of money were being withdrawn by the appellant from the hotel business towards personal expenses of the appellant. It was further found that *prima-facie* the appellant's right in the business of M/s. Hotel Amardeep would accrue

only after the lifetime of the respondent, to whom the said business was bequeathed even under the Will propounded by the appellant. Thus the appellant would not be allowed to carry on the said business and continue to misappropriate, mishandle or waste the estate of the deceased testator for his personal gain to the detriment of the respondent. The events which unfolded a couple of months prior to the death of the deceased, especially the execution of the two gift deeds in respect of flat Nos.101, Kusum Villa and 302, Pritikia Apartment whereby the said flats were shown to have been gifted by the respondent in favour of the daughter of the appellant, Hansmeet Kaur, and Mrs. Parmeet Kaur, the first wife of the appellant, respectively, were taken note of by the learned Single Judge. Lastly, the learned Single Judge found that the decree of divorce between the appellant and Mrs. Parmeet Kaur, whereunder an amount of Rs.7 lakhs per month was agreed to be paid to Mrs.Parmeet Kaur, towards maintenance, was claimed to be a paper decree by both the appellant and Mrs. Parmeet Kaur. In contrast, the appellant categorically declined to pay even a reasonable amount to the respondent despite substantial income from the hotel business. These factors weighed with the learned Single Judge to pass the impugned order. Being aggrieved, the appellant has come in appeal.

14) We have heard Shri P.K. Dhakephalkar, the learned Senior Counsel for the appellant, and Mrs. Veena Thadani, the learned counsel for respondent at considerable length.

15) The learned senior counsel Shri Dhakephalekar for the appellant assailed the impugned order by raising a slew of challenges. Firstly, according to the learned senior counsel, the learned Single Judge committed a manifest error in expanding the scope of the testamentary proceedings. The learned Single Judge lost sight of the fact that the testamentary court was concerned with only the validity and genuineness of the Will and not the property in question. Secondly, the resort to the provisions contained in Section 247 of the Act was uncalled for. Thirdly, the respondent-applicant had not made out a case which warranted the exercise of the jurisdiction to appoint an administrator *pendente lite*. Fourthly, the learned Judge did not properly appreciate the material placed on record and was swayed by the fact that the appellant was paying certain money to Parmeet for house-hold expenses and did not accede to the suggestion of the Court to pay a reasonable amount to the respondent. These factors, however, according to the learned counsel for the appellant, do not justify the exercise of the extra-ordinary power under Section 247 of the Act to appoint as an Administrator *pendente lite* by ousting the appellant from M/s. Hotel Amardeep.

16) In opposition to this, the learned counsel for the respondent would urge that the circumstances brought on record unmistakably indicate that the appellant has left no stone unturned to completely divest the respondent of all the immovable properties left behind by the testator. The sequence of events leading to the institution of present proceedings, according to the learned counsel for the respondent, leads to an inescapable inference that the appellant has been making systematic efforts to siphon off the assets and properties of the testator by resorting to ingenious devices. In the circumstances, since under the very Will propounded by the appellant, the entire property has been bequeathed to the respondent, the appellant cannot be permitted to waste the estate of the deceased. The learned counsel for the respondent thus submitted that the learned Single Judge rightly exercised the jurisdiction to appoint respondent administrator *pendente lite*.

17) In the backdrop of the rival submissions, canvassed across the bar, and the material on record, the following questions arise for our consideration :-

(i) Whether the learned Single Judge committed a jurisdictional error in appointing Administrator *pendente lite*?

(ii) Whether, in the facts of the cases, the appointment of Administrator *pendente lite* is justifiable?

18) As the limited nature of the jurisdiction and scope of proceedings, in a testamentary petition, was vehemently pressed into service on behalf of the appellant, we deem it appropriate to deal with the said challenge, at the outset. The edifice of the challenge was sought to be built on the premise that it is a settled position in law that the testamentary court is concerned with the question as to whether the document propounded as the last Will and testament of a deceased person, was duly executed and attested in accordance with law, and whether at the time of said execution, the testator was in a sound and disposing state of mind. The learned counsel for the appellant, to lend support to the aforesaid submission, banked upon two judgments of this Court.

19) One rendered by the learned Judge of this Court in the case of ***Rupali Mehta Vs. Smt. Tina Narinder Sain Mehta***¹ wherein it was enunciated that in a testamentary suit, the property which is mentioned in the Will or property which may be or may not be left behind by the deceased is not the subject matter of the testamentary suit, and, therefore, in exercise of its power under Civil Procedure Code, the testamentary Court would not be entitled to make any interim order in relation to protection of the property, unless an order is required to be made by the Court in the peculiar circumstances under Part-VII of the Act. It was further held that

1 AIR 2007 BOMBAY 62

there is no such inherent power available to the Court to pass interim order under the scheme of the Act.

20) Another judgment is of a Division Bench of this Court in the case of ***Ramchandra Ganpatrao Hande alias Handege Vs. Vithalrao Hande & Ors.***² wherein the correctness of the aforesaid ruling in the case of ***Rupali Mehta Vs. Smt. Tina Narinder Sain Mehta*** (Supra) was examined. In the case of ***Ramchandra Ganpatrao Hande alias Handege Vs. Vithalrao Hande & Ors.*** (Supra), after a survey of the authorities governing the nature of the jurisdiction exercised by the testamentary Court, it was observed as under :-

“14.It would not be permissible, in the face of the specific provision of sub-section (2) of Section 269 to read into the provisions of Sections 266 and 268 a general power to grant interlocutory relief even prior to the grant of probate in respect of the property which is alleged to form part of the estate of the deceased. This construction is fortified by the principle that the testamentary Court in proceedings for probate is only concerned with the question as to whether the Will of the deceased is genuine and that it has been made voluntarily. The probate Court is not concerned with questions relating to the property itself. Though an assiduous attempt was made on behalf of the Appellant to rely upon the provisions of the Act, to which a reference has been made earlier, the Court in this case is essentially concerned with the powers of the testamentary Court when it exercises its jurisdiction in a petition for the grant of probate. In view of the express provision which is contained in Section 269(2), there can be no recourse to the exercise of the inherent powers of the Civil Court. This, however, would not preclude recourse to a civil suit for obtaining relief necessary for the protection of the property.

21) The learned counsel for the appellant, in the light of the aforesaid

² 2014(4) All. MR 189

pronouncement of the Division Bench, submitted that the reliance, by the learned Single Judge, on a judgment in the case of ***Shernaz Faroukh Lawyer & Anr. Vs. Manek Dara Sukhadwalla & Anr.***³, in support of the impugned order, is not well placed. It was urged that the appointment of an administrator in the case of ***Shernaz Faroukh Lawer & Anr. Vs. Manek Dara Sukhadwalla & Anr.*** (Supra), was warranted by the peculiar facts, wherein it was shown that the attitude and acts of the first defendant therein were prejudicial to the interest of estate; which, according to the learned counsel for the appellant, is not the case at hand.

22) Indisputably, the testamentary Court is required to determine the questions as to the genuineness and validity of the Will propounded. In a testamentary proceedings, the Court can not adjudicate the question of title to the property, under bequest, or even the existence of the property. The Court has only to determine whether the Will, allegedly executed by the testator, is of his free will and volition, and it fulfills the requirements as to execution and attestation.

23) Undoubtedly, the pronouncements, on which reliance is placed by the learned counsel for the appellant, enunciate the legal position that the testamentary Court is not empowered to pass interim orders *de hors* the jurisdiction conferred upon it by the provisions of the Act, as if it is a Civil

3 2014 (2) Bom. C.R. 591

Court which deals with the proprietary claims to the property. There is no quarrel over the proposition that the Indian Succession Act, 1925 is a complete Code in itself. However, in our view, the aforesaid pronouncements are of little assistance to advance the cause of the submissions sought to be urged on behalf of the appellant. In the case at hand, the learned Single Judge has not passed an interim order, like the facts of the cases in which the aforesaid pronouncements were rendered.

24) In the case at hand, the testamentary Court has expressly resorted to the provisions contained in Section 247 of the Act which empowers the Court to appoint an administrator of the estate of the testator. Section 247 of the Act reads as under :-

“247. Administration, pendente lite.—Pending any suit touching the validity of the Will of a deceased person or for obtaining or revoking any probate or any grant of letters of administration the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate, and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.”

25) From the phraseology of the aforesaid Section, it becomes evident that it incorporates an enabling provision and invests the testamentary Court with power to appoint an administrator *pendente lite*. The text of aforesaid section does not, in terms, spell out the circumstances in which an administrator *pendente lite* may be appointed. Undoubtedly, the

testamentary Court, in the backdrop of the facts and circumstances of the given case, ought to be satisfied as to the necessity for appointment of an administrator *pendente lite*. The object of conferring jurisdiction upon the testamentary Court to appoint an administrator *pendente lite* is implicit. The object appears to be to ensure that the estate of the testator is effectively managed and securely preserved for the benefit of the persons who are ultimately found to be entitled to succeed to it. This broad object subsumes in its fold a situation wherein it is brought on record that the act and conduct of the person in possession of the estate of the testator are detrimental to the protection and preservation of the estate. The afore-extracted section gives ample discretion to the Court as to the person who can be appointed as an administrator *pendente lite*. There is no apparent prohibition for appointment of a party to the testamentary proceedings as an administrator *pendente lite*. However, the provision expressly puts two limitations on the powers of the administrator *pendente lite* : (i) he has no right to distribute the estate; and (ii) he is subject to the immediate control of the Court and shall act under its direction.

26) The learned senior counsel for the appellant urged that the recourse to the provisions contained in Section 247 by the respondent was a ploy to get over the limits on the jurisdiction of the testamentary Court. Since the testamentary Court could not have passed an interim order, the respondent

has invoked the provisions of Section 247 so as to oust the appellant from the business of M/s. Hotel Amardeep, which is being run by the appellant alone since long.

27) This submission, in a sense, revolves around the justifiability of the appointment of an administrator *pendente lite* rather than the jurisdiction of the testamentary Court to appoint an administrator. In view of the express provision, which empowers the testamentary Court to appoint an administrator to the estate of the testator, pending adjudication of the testamentary proceedings, we are not inclined to accede to the jurisdictional challenge raised on behalf of the appellant.

28) This propels us to the question as to whether the appointment of the administrator was justifiable? In order to properly appreciate the said question, it may be apposite, to make a brief reference to the facts of the case, especially in the context of three sets of proceedings. Firstly, the proceedings initiated by the testator and the respondent against the appellant during the lifetime of the testator. Secondly, the matrimonial proceedings between the appellant and Mrs.Parmeet. Thirdly, the proceedings initiated after the demise of the testator.

29) It is incontestable that the deceased and the respondent had instituted the Suit bearing No. 423 of 2014 seeking injunction against the

respondent from interfering with the business of M/s. Hotel Amardeep, and otherwise interfering with the possession and enjoyment of the other immovable properties. In the said suit, it was averred that though Flat No. 301 in Preetika Apartment, stood in the name of the appellant, it was purchased by the testator. The tenor of the suit was that the appellant herein has been interfering with the management and the affairs of the business of M/s. Hotel Amardeep and wasting the estate by acts of omission and commission.

30) Irrefutably, the appellant and his first wife Parmeet Kaur, filed a joint petition for divorce by mutual consent, bearing Petition No. F-1727 of 2016, wherein it was averred that they were residing separately since 2nd May 2015. In the said petition, a decree of divorce came to be passed on 30th January 2017 and the marriage between the appellant and Parmeet Kaur came to be dissolved by mutual consent. The judgment dated 30th January 2017 records that the appellant, by way of full and final settlement towards alimony, has transferred Flat No.301, Preetika Apartment and two more commercial properties in favour of Parmeet Kaur. It further records that the appellant had agreed to pay a sum of Rs.7 lakhs per month by way of maintenance to Parmeet Kaur and her children and it would be increased by Rs.1 lakh by every two years.

31) The proceedings which were initiated after the demise of the testator can be divided in two parts. It is alleged that on 18th March 2017, the appellant and Parmeet Kaur fraudulently got executed two gift deeds from the respondent. Under the first deed, the respondent was shown to have gifted Flat No. 101 in Kusum Villa Khar to her grand-daughter Hansmeet Kaur. Under the second deed, the respondent is shown to have gifted Flat No.302 in Preetika Apartment in favour of Parmeet Kaur. The respondent has alleged that after the said fraud was unearthed, she instituted a suit bearing No. 539 of 2018, questioning the validity of both the gift deeds. On a Notice of Motion filed therein, an order of status-quo has been passed by this Court on 21st April 2018. The second set of proceedings is the petition of probate instituted by the appellant propounding the Will, allegedly executed by the testator on 12th April 2017, being Probate Petition No.2458 of 2017. The other is the petition for letters of administration being TP(L.) No. 917 of 2018 filed by the respondent in respect of the Will, allegedly executed by the deceased on 29th January 2014. In view of the caveats filed in the rival testamentary petitions, the said petitions are being tried as contested suits.

32) At this juncture, a brief reference to the dispositions in the alleged Wills propounded by the appellant and the respondent becomes necessary. The will propounded by the respondent makes reference to the history of

the litigation between the parties and the strained relations between the testator and the appellant. The testator professed to ascribe reasons as to why the appellant was being disinherited. Thereafter, the disposition of the property is made principally in favour of the respondent. Whereas, in the Will propounded by the appellant, the testator proposes to bequeath all his properties, whether movable or immovable, to the respondent absolutely forever and, in the event of her demise, the appellant shall have the power to deal with or dispose of the said properties. The said Will further records that the appellant conducts and manages the affairs of the M/s. Hotel Amardeep and whole income generated in the said hotel shall belong to the appellant who should look after the hotel expenses and expenditure.

33) Laying emphasis upon the aforesaid nature of the disposition under the Will, propounded by the appellant, it was strenuously urged on behalf of the appellant that, genuineness of the Will propounded by the appellant is borne out by the fact that the properties have been bequeathed to the respondent, *albeit* for her life time. Had the appellant prepared the Will, as alleged by the respondent, the appellant would have seen to it that the respondent is totally disinherited from the property. Instead the appellant has propounded the Will which directs that the respondent shall have the right to the property during her lifetime. Moreover, it is an undeniable fact that the appellant has been managing the affairs of M/s. Hotel Amardeep,

and the same is specifically reflected in the Will propounded by the appellant.

34) We are mindful of the fact that the genuineness or otherwise of either Wills, propounded by the appellant and the respondent, is yet to be categorically determined by the testamentary Court. At this stage, the reference to the aforesaid proceedings and the contents of the Will is only to ascertain the justifiability or otherwise of the impugned order appointing administrator *pendente lite*. But, upon a *prima-facie* view of the matter, even the Will propounded by the appellant constitutes the respondent as the legatee of the estate of the deceased testator. Having propounded the Will, the appellant may not be in a position to now dispute the disposition thereunder without electing to forego benefit which he derives under the said Will.

35) Assailing the impugned order, it was submitted that there was no foundation in the application regarding the waste of the estate of the testator. It was urged that the fact that the appellant was siphoning off the income from the business of M/s. Hotel Amardeep, especially that the appellant was giving a large amount of money to Parmeet Kaur and thereby causing loss to the estate of the testator, was nowhere pleaded in the application. On the contrary, in the application, an endeavour was made to show that during the lifetime of the testator, the respondent was looking

after the business of the said hotel alongwith the deceased and even after the demise of the testator, the said business was being run by the respondent through manager and staff. However, the appellant, taking undue advantage of the condition of the respondent, interfered with the said business and siphoned off the money therefrom.

36) Evidently, the application contains averments to the effect that the appellant has been siphoning off money from the income of M/s. Hotel Amaradeep. It is true that the application does not find mention of the fact that a particular sum of money was being paid systematically and periodically by the appellant to Parmeet Kaur. However, at this stage of the proceedings, the indubitable situation which emerges from the material on record, adverted to above, needs to be taken into account. It is incontestable that the marriage between the appellant and Parmeet Kaur came to be dissolved by a decree of divorce by mutual consent. It is not in dispute that the appellant had agreed to pay maintenance @ Rs.7 lakhs per month to Parmeet Kaur. Documents in the form of statement of accounts were placed on record to show that large sum of money was paid to Parmeet Kaur Chadha out the income generated from M/s. Hotel Admardeep. Upon perusal of the said statement of accounts we found that, with regular frequency, even daily or on an alternate day, a definite sum was paid to Parmeet Kaur Chadha.

37) The statement of accounts thus fortifies the stand of the respondent that from out of the income generated in the M/s. Hotel Amardeep, substantial amounts were paid to Parmeet Kaur. In addition, there are entires which indicate that payments were made to other entities which have the connection with the firms floated by the appellant.

38) In this context, the learned counsel for the respondent submitted that the said aspect of payment of maintenance and transfer of the immovable properties in the name of Parmeet Kaur Chadha is required to be appreciated in the backdrop of the admitted fact that the said decree of divorce is a paper decree and the appellant and Parmeet Kaur are still staying under the same roof. The learned Single Judge noted that the appellant had made a statement before the Court on 21st April 2018 and 26th June 2018 in Suit No. 423 of 2014, that the decree of divorce between the appellant and Parmeet Kaur was only a paper decree.

39) The learned counsel for the appellant attempted to wriggle out of the situation by putting forth a submission that in the complex realities of life, as some marriages are of convenience, divorces are also of convenience. Therefore, according to the learned senior counsel for the appellant, the said fact does not detract materially from the case of the appellant.

40) The aforesaid submission, in our view, suits the convenience of

defence of the appellant. The broad view of the matter is required to be taken. It is not a mere factum of the appellant and Mrs. Parmeet Kaur allegedly residing together despite a decree of divorce. Nor is it restricted to the personal marital life of the appellant and Mrs. Parmeet Kaur. The circumstances in which registered documents have been allegedly got executed whereby the respondent is shown to have gifted the properties to not only her grand-daughter but also to Parmeet Kaur, the divorced wife of the appellant, cannot be said to be insignificant or inconsequential. As indicated earlier, as a part of settlement of marital dispute, under the decree of divorce, three immovable properties were transferred in favour of Mrs. Parmeet Kaur by the appellant. The two immovable properties, which stood in the name of the respondent, were shown to have been gifted away by the respondent by the gift deeds dated 18th March 2017.

41) The flurry of activities in close proximity to the death of the deceased, i.e., 27th April 2017, namely (i) a decree of divorce between the appellant and Parmeet Kaur dated 30th January 2017; (ii) the marriage of the appellant and Sonu Pandey on 14th February 2017; (iii) the execution of the two gift deeds by the respondent on 18th March 2017, (iv) the execution of the alleged Will by the testator in favour of the appellant on 12th April 2017 tell a different story and indicate an urgency of purpose. They cannot be brushed aside as mere coincidences.

42) The learned counsel for the appellant attempted to downplay the payment of money from the income of M/s. Hotel Amardeep to Parmeet Kaur by urging two points. One, the amount was paid for house-hold expenses. Two, the statements of accounts indicate that a substantial amount, i.e., Rs.14,64,000/- was paid during the very same period, from April 2016 to November 2016, to the respondent; during which period, an amount of Rs.37,22,810 was paid to Parmeet Kaur. A criticism was made regarding the observations in the impugned order, that it could not be shown that any amount has been paid by the appellant to the respondent from the income generated from the said hotel business.

43) On the first count, the claim of the appellant that amount was paid to Parmeet Kaur for the household expenses is belied by the entries in the statement of accounts. We endeavoured to ascertain the significance of the payment of varying amounts in the range of Rs.20,000/- to 23,000/-. On close scrutiny, we found that the explanation is furnished by an entry, dated 2nd November 2016 which shows that Parmeet Kaur Chadha was paid a sum of Rs.23,333/- per day by dividing the monthly maintenance of Rs.7 lakhs by 30 days.

44) On the second count, it is true that from the statement of accounts, it is revealed that, certain payments were made to the respondent as well. However, the element of system, continuity and repetition with which the

payments have been made to Mrs. Parmeet Kaur is lacking in respect of the payments made to the respondent.

45) The situation which thus obtains is that there is strong material to indicate that the appellant has been taking out money from the income of M/s. Hotel Amardeep and utilizing the same for meeting his personal obligations. The allegation of waste of the estate of the testator is required to be seen through the attendant circumstances. There is material to indicate that the respondent was sought to be divested of all the immovable properties and they were tried to be settled upon first wife and the daughter of the appellant. Undoubtedly, the validity or otherwise of the gift deeds whereby the respondent is shown to have gifted the properties in favour of Parmeet Kaur and Hansmeet Kaur is a matter of trial. Nonetheless, taking an overall view of the matter, the learned Single Judge was justified in drawing an inference that the appointment of the administrator *pendente lite* was expedient.

46) The conspectus of the aforesaid consideration is that the appeal deserves to be dismissed. Hence we pass the following order :-

The appeal stands dismissed.

In view of the disposal of the appeal, the Notice of Motion No. 256 of 2019 does not survive and also stands disposed of.

In the circumstances, there shall be no order as to costs.

47) The learned counsel for the appellant, at this stage, prayed for staying the execution and operation of the impugned order for a further period of four weeks.

For the reasons recorded in the judgment, whereby we have dismissed the appeal, we are not inclined to entertain the request and grant further stay to the execution and operation of the order passed by the learned Single Judge. Hence, the request for stay stands rejected.

[N.J. JAMADAR, J.]

[R. M. BORDE]