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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY & INTESTATE JURISDICTION

TESTAMENTARY SUIT NO.173 OF 2015
IN
TESTAMENTARY PETITION NO.117 OF 2015

WITH
TESTAMENTARY SUIT NO.57 OF 2017
IN
TESTAMENTARY PETITION NO.672 OF 2016

Mrs.Geeta M. Narayan	...Plaintiff
V/s.	
Ms.Uma Narayan	...Defendant

WITH
NOTICE OF MOTION NO.133 OF 2016
IN
TESTAMENTARY SUIT NO.173 OF 2015
IN
TESTAMENTARY PETITION NO.117 OF 2015

Ms.Uma Narayan	...Applicant
	Ori.Defendant

IN THE MATTER BETWEEN :

Mrs.Geeta M. Narayan	...Plaintiff
V/s.	
Ms.Uma Narayan	...Defendant

WITH
TESTAMENTARY SUIT NO.218 OF 2016

Ms.Uma Narayan	...Plaintiff
V/s.	
Mrs.Geeta M. Narayan	...Defendant

Ms.Rajni Iyer, Senior Counsel with Mr.Susheel Mahadeshwar I/b Ms.Ranjana Todankar for the Applicant in Notice of Motion and for the Defendant in Testamentary Suit Nos.57 of 2017 and 173 of 2015 and for the Plaintiff in Testamentary Suit No.218 of 2016.

None for the Original Plaintiff and the Defendant in Testamentary Suit No.218 of 2016.

Ms.Uma Palsuledesai, A.G.P. for the State.

CORAM : R.D. DHANUKA, J.
DATE : 5TH MARCH, 2019.

P.C. :-

1. These matters were on board from time to time when none appeared for the plaintiff in Testamentary Suit No.173 of 2014, who is the defendant in Testamentary Suit No.218 of 2016 and for the plaintiff in Testamentary Suit No.57 of 2017 inspite of service of notice through Uma Narayan and also through this Court.

2. Insofar as Testamentary Suit No.173 of 2015 is concerned, the plaintiff – Geeta Narayan had filed Testamentary Petition No.117 of 2015 *inter-alia* praying for Letters of Administration with the Will annexed to the property and credit of Mohan Narayan, who expired on 20th September, 2014. It is the case of the plaintiff in that suit that she was the wife of the said deceased. The plaintiff propounded the alleged Will and Testament of the said deceased dated 14th December, 2009. It was the case of the plaintiff that under the said alleged Will the said deceased had appointed Mr.Shailesh Kantilal as the executor who renounced his right of the executorship

by filing an affidavit.

3. The plaintiff disclosed the name of the mother of the said deceased Mrs.Vasanthan Narayan as the other heir and next of kin under the provisions of the Hindu Succession Act, 1956. In paragraph 10 of the petition, it was alleged that save and except the legal heirs mentioned in paragraph 9 of the petition, the deceased did not have any other legal heirs left. Mrs.Vasanthan Narayan, mother of the said deceased filed caveat and affidavit in support of the caveat in the said Petition No.117 of 2015 and disputed the alleged marriage of the petitioner with her son Mohan Narayan. In the affidavit in support of the caveat, the caveator also disputed the alleged Will propounded by the plaintiff and alleged that the said Will was fraudulent and was a fabricated document. In view of the caveat and affidavit in support of the caveat filed by the mother of the deceased, the said testamentary petition came to be converted into the testamentary suit.

4. Insofar as the Testamentary Petition No.1196 of 2016 is concerned, the said Uma Narayan filed the said petition *inter-alia* praying for grant of Probate of the last Will and Testament of Mrs.Vasanthan Narayan @ Mrs.Vasanthan Vaidyeswaran Narayan. The mother of the plaintiff died on 7th February, 2016. Uma Narayan, the plaintiff was appointed as the sole executrix under the said Will. The

plaintiff alone was the legal heir and next of kin according to the Hindu Succession Act, 1956. Geeta Mohan, who filed the caveat and an affidavit in support in the said Testamentary Petition No.1196 of 2016. The said petition was accordingly converted into the Testamentary Suit No.218 of 2016. In the affidavit in support of the caveat, Geeta Mohan alleged that she is the legal heir of the deceased Mrs.Vasanthan Narayan being her daughter in law and the widow of the predeceased son Mohan Narayan. It was alleged in the affidavit in support of the caveat that the said deceased father in law of the defendant was unwell from quite some time and was not of sound mind to execute the said Will. The said deceased was fully disturbed mentally and was not in a position to execute any Will or transfer of the property during her life time. It was also disclosed in the said affidavit in support of caveat by her that she had already had filed the testamentary petition on 22nd March, 2016 in respect of the alleged Will and Testament of her alleged deceased husband. In view of such caveat and affidavit in support, the said petition was converted into the testamentary suit.

5. Insofar as Testamentary Petition No.672 of 2016 is concerned, the said petition was filed by Geeta Mohan Narayan *inter-alia* praying for Letters of Administration of the the property of Mrs.Vasanthan Narayan. In the said petition, Geeta Narayan disclosed

the name of Uma Vaidyeswaran Narayan for the first time as the daughter, legal heir and next of kin of the said Mrs.Vasanthanarayan. It is alleged in the petition that the said Geetanarayan had 125% share in the property of the said deceased, whereas Uma Narayan had 75% in the entire property i.e. flat nos.301 and 302 respectively and other securities. Uma Narayan filed a caveat and affidavit in support of caveat in the said petition on 16th November, 2016 raising various issues. It is alleged by Uma Narayan in the affidavit in support of the caveat that her brother Mohan Narayan died on 20th September, 2014 and her mother Mrs.Vasanthanarayan died on 7th February, 2016 and that she was the only legal heir of Mrs.Vasanthanarayan. The petitioner Geetanarayan was not married to her brother Mohan Narayan. It is alleged in the affidavit in support of the caveat that the said Geetanarayan was a maid servant in the house of the mother of the caveator and her brother Mohan and stayed in the house till the month of October, 2014.

6. It was also brought on record in the affidavit in support of the caveat that the alleged Will of Mohan Narayan propounded by Geetanarayan was on non-judicial stamp of Rs.100/- having numbered LS 808497 was issued by the Stamp Office on 7th November, 2014. It is contended that the alleged Will propounded by Geeta Mohan was however, allegedly executed on 14th December,

2009. The said deceased had expired on 20th September, 2014. Reliance is also placed on a letter addressed by the Additional Treasury Officer confirming these facts.

7. The said Uma Narayan filed Notice of Motion No.133 of 2016 in the Testamentary Petition No.173 of 2015 *inter-alia* praying for an order and directions to the office to invest the amount. By an order dated 8th July, 2016, this Court observed that the conduct of Geeta Mohan was extremely suspicious. There was discrepancy between the date on the stamp paper (7th November, 2014) and other dates that had been imprinted on it (17th November, 2009 and 8th December, 2009) and the date of death of the deceased Mohan Narayan which was 20th September, 2014. In view of these discrepancies brought on record by the said Uma Narayan, the plaintiff filed two applications, one for withdrawal of the testamentary suit filed by her and secondly for leave to withdraw the Will by filing Chamber Summons No.15 of 2016. This Court rejected the said chamber summons. By the said order dated 8th July, 2016, this Court directed that the document in question itself has to be sufficiently secured.

8. This Court accordingly directed that the plaintiff will not be permitted to withdraw, amend or otherwise deal with the suit till further orders of the Court. It was further directed that neither party

shall file any further affidavits or proceedings with the Registry. It was directed that the entire bundle of papers will be retained by the Prothonotary & Senior Master till further order.

9. On 4th August, 2016, this Court passed an order in Notice of Motion No.133 of 2016 and considered the issue of fabrication of the alleged Will by the plaintiff and observed that upon such investigation if it is found that there was in fact a discrepancy, it might well tantamount to a fraud on the Court and that must be dealt with severely. This Court accordingly directed the Commissioner of Police, Greater Mumbai to appoint a Deputy Commissioner of police to examine this case in the light of the facts set out and also to call for necessary records from the Palghar Treasury Office. It was further directed that the investigating authority shall be entitled to examine the original Will which is lodged with the Court and must return a finding as to whether a *prima facie* case of commission of an offence is made out and if so under what sections. This Court also directed that if such case is made out, the first information report will need to be registered.

10. In the said Testamentary Suit No.173 of 2015, the State of Maharashtra filed a Chamber Summons being No.127 of 2016 *inter-alia* praying for the custody of the original Will for further investigation. This Court noticed that the State Government has

already filed an FIR on 12th December, 2016 alleging offences under section 465, 467 and 468 and other sections of the Indian Penal Code. This Court directed that an authenticated copy of the order will be served in a sealed cover along with certified copy of the Will.

11. The said notice of motion is still pending. The investigation against the said Geeta Narayan is going on. On 28th February, 2019, the office of the Prothonotary & Senior Master of this Court submitted a report confirming that the office of this Court had handed over the original Will No.45 of 2016 dated 14th December, 2009 of Mohan Narayan for identification in offence registered with the Police Station being FIR No.388 of 2016 and till date, the said original Will has not been returned by the concerned Police Station. Learned AGP on instructions states that she would make appropriate statement in respect of the original Will after such investigation is complete.

12. By an order dated 11th February, 2019, this Court framed four issues in all the three suits which would be dealt with by this Court in the later part of the judgment which are as follows :

- 1). Whether the plaintiff in Testamentary Suit No.173 of 2015 proves the execution and attestation of the alleged Will of Mohan Narayan dated 14th December, 2009 in accordance with law or not ? **...In Negative**

- 2). Whether the plaintiff in Testamentary Suit No.218 of 2016 proves that the execution and attestation of the alleged Will of Vasantha Narayan dated 11th October, 2014 in accordance with law or not ? **...In Affirmative**
- 3). Whether the plaintiff in Testamentary Suit Nos.173 of 2015 and 57 of 2017 and the defendant in Testamentary Suit No.218 of 2016 proves that she was married to the deceased Mohan Narayan and is entitled to file a caveat in Testamentary Petition No.218 of 2016 filed by the plaintiff Ms.Uma Narayan ? **...In Negative**
- 4). What order ? **..As per Operative Part**

13. Ms.Iyer, learned senior counsel appearing for Uma Narayan invited my attention to the pleadings in all the three suits, averments made in support of the caveats and various interim orders passed by this Court from time to time. Learned senior counsel pointed out that Geeta Narayan who claims to be the widow of Mohan Narayan was not married to Mohan Narayan, who was the brother of Uma Narayan. In support of this submission, learned senior counsel invited my attention to the alleged marriage invitation

card relied upon by the said Geeta Narayan and would submit that according to the said alleged marriage invitation card relied upon by Geeta Narayan, the marriage between Geeta Narayan and Mohan Narayan was alleged to be solemnized on 21st March, 2002 at 11:00 a.m. at Ram Mandir, Kalamb, Taluka Karjat, District Raigad Pin – 410 101. She also invited my attention to the alleged application for registration of the alleged marriage relied upon by Geeta Narayan. She submits that the said form of registration indicates the date 7th March, 2012 of filing of such form. There is no proof of filing the said form for registration of the alleged marriage between Geeta Narayan and Mohan Narayan. She submits that two alleged witnessed on the said form also have alleged to have signed on 7th March, 2012. The date in column 9 of that form for presentation is blank. Column 5 at page 114 prescribes a condition that if the marriage invitation card is not available, a joint declaration on stamp paper of Rs.100/- has to be filed for registration of marriage.

14. Learned senior counsel invited my attention to an affidavit annexed at page 115 alleged to have been filed by Geeta Narayan. She submits that the said alleged affidavit is also undated. There is no proof of filing such affidavit with the concerned authority for registration of marriage. In paragraph 2 of the said affidavit, it is alleged that since the marriage between the said Geeta Narayan

married Mohan Narayan was love marriage, no marriage invitation card was printed at that time. She submits that this alleged affidavit is *ex-facie* contrary to the alleged marriage card relied upon by Geeta Narayan. The said affidavit is *ex-facie* false. It is further submitted that the place of marriage mentioned in paragraph 1 of the said affidavit i.e. Mangal Murti Nivas, Plot No.1405, Ward No.3, Kadav Pada, Kalyan Highway Road, Vangni (E), District Thane is also inconsistent with the place of marriage mentioned on the marriage invitation card.

15. Learned senior counsel invited my attention to the Ration Card showing the name of Geeta Narayan and would submit that on the Ration card the said Geeta Narayan fraudulently entered her name on 20th March, 2013. Learned senior counsel submits that when these inconsistencies and fraud on the part of said Geeta Narayan was brought to the notice of this court, she made two applications before this court, one for withdrawal of the Will and another for withdrawal of the testamentary suit which has been rightly refused by this Court. She invited my attention to the averments made by Geeta Narayan in her Testamentary Suit No.57 of 2017 and more particularly paragraphs 6 and 7. In the said paragraphs, it is averred by the said Geeta Narayan that the son of the deceased left his last Will dated 14th December, 2009. She however, found it

difficult to prove the said Will due to various reasons such as no Doctor's certificate to the Will, death of witness, executor refused to enter the name of the mother of the petitioner and thus she waived her right as per the Will dated 14th December, 2009. It is further averred in the said petition that she was not executing the Will and accepted half share claimed by the deceased in the property of her husband Mohan Narayan. It is submitted by the learned senior counsel that since the said Geeta Narayan was not married to Mohan Narayan, she could not have filed any testamentary petition claiming to be the widow of Mohan Narayan or a legal heir of Mohan Narayan or claiming to be a daughter in law of Mrs.Vasantha Narayan.

16. It is submitted by the learned senior counsel that even otherwise since the said Geeta Narayan had proposed to withdraw the Will propounded by her and also proposed to withdraw the testamentary suit filed by her, she cannot have any caveatable interest in the Will propounded by Uma Narayan or in the estate of Mrs.Vasantha Narayan.

17. Though this Court had granted an opportunity to the said Geeta Narayan to prove her case and to discharge the burden cast on her as per issues framed by this Court on 11th February, 2019, she failed to appear before this Court in person or through an advocate. The said Geeta Narayan was served with a copy of the order dated

11th February, 2019 by the learned advocate representing Uma Narayan and also by this Court.

18. Insofar as issue no.1 is concerned, in my view, on perusal of the documents relied upon by Geeta Narayan including her alleged marriage invitation card , application form for registration of marriage and several documents relied upon by her as summarised aforesaid, the said Geeta Narayan could not prove her marriage with Mohan Narayan and thus cannot claim herself to be a widow of Mohan Narayan. In my view, since the said Geeta Narayan did not prove her marriage with Mohan Narayan, she cannot claim to be a legal heir of Mohan Narayan and consequently cannot claim to be a daughter in law of Mrs.Vasanth Vaidyeswaran Narayan. The onus was on the said Geeta Narayan to prove the execution and attestation of the alleged Will of Mohan Narayan dated 14th December, 2009 in accordance with law. No evidence is led by the said Geeta Narayan to prove the execution and attestation of the alleged Will of Mohan Narayan. She herself had applied for withdrawal of the alleged Will propounded by her and also applied for withdrawal of suit filed by her for seeking Probate of alleged Will of Mohan Narayan. Issue no.1 is accordingly answered in negative.

19. Insofar as issue no.2 is concerned, in my view, the onus to prove the execution and attestation of the alleged Will of

Mrs.Vasantha Narayan dated 11th October, 2014 is on the plaintiff Uma Narayan in the said case. The said Uma Narayan is present in Court has relied upon the affidavit of Indubhusan Banerjee dated 27th June, 2016 who was one of the attesting witness to the Will and Testament of Mrs.Vasantha Narayan. Insofar as the caveat and affidavit in support filed by said Geeta Narayan in the said testamentary suit filed by Uma Narayan is concerned, since this Court is of the view that the said Geeta Narayan was not married to Mohan Narayan and thus was not a legal heir of Mohan Narayan or was not the daughter in law of Mrs.Vasantha Narayan based on her alleged claim of widow of Mohan Narayan, she has no caveatable interest in the estate of Mrs.Vasantha Narayan. Her caveat as well as the affidavit in support of the caveat are thus dismissed on that ground itself. The said Testamentary Suit No.218 of 2016 thus filed by Uma Narayan inter-alia praying for grant of Probate in respect of the last Will and Testament of Mrs.Vasantha Narayan is proceeded with as an uncontested matter. Issue no.2 is accordingly answered in the affirmative.

20. Insofar as the issue no.3 is concerned, for the reasons recorded aforesaid, this Court is of the view that the plaintiff Geeta Narayan has failed to prove her marriage to the deceased Mohan Narayan and is thus not entitled to file the said Testamentary Suit

Nos.173 of 2015 and 57 of 2017. Issue no.3 is accordingly answered in negative.

21. A perusal of the record clearly indicates that the said Geeta Narayan has propounded a false and fabricated Will of Mohan Narayan by producing a stamp paper which was of the date much later of the death of the deceased Mohan Narayan. The alleged marriage invitation card, alleged application for registration of alleged marriage and other documents relied upon by Geeta Narayan dealt with in earlier paragraphs of this judgment reflects contradictions and falsehood fabrication and fraud committed by Geeta Narayan upon this Court. An investigation in this regard is already pending before the concerned police station.

22. Insofar as the Notice of Motion No.133 of 2016 is concerned, since this Court has already referred the matter to the concerned police authorities for the purpose of investigation of the allegations of fraud, forgery and fabrication, this notice of motion does not survive. The concerned police station is directed to convey to this Court the outcome of the FIR filed against Geeta Narayan.

23. I therefore, pass the following order :-

- a). Testamentary Suit No.173 of 2015 is dismissed.
- b). Testamentary Suit No.57 of 2017 is dismissed.
- c). Testamentary Suit No.218 of 2016 is decreed as prayed.

d). The office is directed to issue grant of Probate in favour of Uma Narayan of the last Will and Testament of Mrs.Vasantha Vaidyeswaran Narayan dated 11th October, 2014 expeditiously.

e). The suit is decreed with costs quantified at Rs.1,00,000/- which shall be paid by the defendant – Geeta Narayan to the plaintiff – Uma Narayan within two weeks from the date of communication of this order.

f). Notice of Motion No.133 of 2016 is disposed of in view of the orders already passed by this Court referring the issue of fraud, forgery and fabrication against the said Geeta Narayan to the concerned police station.

(R.D. DHANUKA, J.)