

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY & INTESTATE JURISDICTION
TESTAMENTARY SUIT NO.29 OF 1997
IN
TESTAMENTARY PETITION NO. 411 OF 1996

J. K. Girolla **..... Plaintiff**

VERSUS

G. K. Girolla **..... Defendant**

Mr.Mukund Padgaonkar, i/b. Ms.Archana Shirsekar for the Plaintiff.

Mr.Sameer Tendulkar for the Defendant.

CORAM : R.D. DHANUKA, J.

DATE : 22nd FEBRUARY, 2019

P.C.

By this testamentary suit, the plaintiff (original petitioner) seeks probate in resepct of the Will dated 5th May, 1989 of the deceased Mr.Kisan Damaji Girolla. In view of the caveat filed by the defendant, the testamentary petition was converted into a suit. This court framed issues on 8th July, 2011 which are as under :-

- (1) Whether the last Will and Testament of the deceased Kisangani Damaji Girolla dated 5th May 1989 is validly executed ?
- (2) Whether the said Will has been executed under undue influence practiced by the plaintiff upon the deceased and without understanding the contents of the writing by the deceased ?
- (3) What relief, if any, is the plaintiff entitled to ?

2. Both the parties led oral as well as documentary evidence. The matter was argued extensively by the learned counsel for both parties.

3. During the course of the arguments, the learned counsel appearing for the defendant on instruction made a statement that his client has not disputed the validity and execution of the Will dated 5th May, 1989 left by the deceased Mr.Kisan Damaji Girolla. He submits that insofar as the properties described in the schedule appended to the testamentary petition at page 11 is concerned, the said business and the said property did not belong to the said deceased Mr.Kisan Damaji Girolla but exclusively belong to the defendant.

4. Learned counsel for the parties jointly state that in view of the statement made by the learned counsel for the defendant, this court is not required to record any reasons for disposing of this testamentary suit. Statement is accepted.

5. In view of the statement made by the learned counsel for the defendant, issue no.1 is answered in affirmative.

6. Insofar as issue no.2 is concerned, since the defendant has admitted the execution and attestation of the Will dated 5th May, 1989, the said issue is answered in negative.

7. Insofar as the submission made by the learned counsel for the defendant that the properties described in the schedule annexed to the testamentary petition belong to the defendant and not the deceased

testator is concerned, the Hon'ble Supreme Court and this court in *catena* of decisions has held that the testamentary court does not decide the title in respect of the properties of the deceased testator and the same can be decided only by the civil court in appropriate proceedings.

8. This court thus cannot go into the issue of title in respect of the said property in this testamentary suit. I, therefore, pass the following order :-

(a) Testamentary suit is decreed as prayed.

(b) The Office is directed to issue grant of probate in respect of the Will dated 5th May, 1989 annexed by the deceased Mr.Kisan Damaji Girolla in favour of the plaintiff expeditiously.

(c) It is made clear that this court has not adjudicated upon the title in respect of the properties described in the schedule annexed to the testamentary suit. If any proceedings are filed by the defendant for adjudication of the title in respect of the said property, the same shall be disposed of on its own merits.

(d) No order as to costs.

[R.D. DHANUKA, J.]