

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
INTERIM APPLICATION NO. 2123 OF 2020
IN
CHAMBER SUMMONS NO. 29 OF 2021
IN
TESTAMENTARY PETITION NO. 973 OF 2019
IN
TESTAMENTARY SUIT NO. 20 OF 2021**

Pramod Mahadev Thakur

...Applicant/
Petitioner

Versus

Nayana Ulhas Raut & Ors

...Respondents

**Mr Yusuf Rampurwala, i/b Hemali Kurne, for the Applicant/
Petitioner.**

Ms Shraddha Vavhal, for Respondents Nos. 2 and 3.

Mr VM Parkar, i/b Rajesh Talekar, for Respondent No.4.

Mr AZ Mookhtiar, for Nayana Raut, Caveator.

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RAMCHANDRA
SANKPAL

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Date: 2021.03.23
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**CORAM: G.S. PATEL, J
DATED: 22nd March 2021**

PC:-

**INTERIM APPLICATION NO. 2123 OF 2020 IN CHAMBER
SUMMONS NO. 29 OF 2021 IN TESTAMENTARY**

**PETITION NO. 973 OF 2019 IN TESTAMENTARY SUIT
NO. 20 OF 2021:**

1. The Interim Application is thoroughly misconceived. It is filed in a Testamentary Petition No. 973 of 2019. The Petitioner is said to be one of the sons of the deceased, Thakur Mahadev Changu who died on 2nd September 2016. According to the Petitioner, the deceased left a Will dated 27th October 2009. That is what the Petition says and that is what the copy annexed to the Petition also says. The Petitioner has been named as an Executor. Hence the Petition for Probate.

2. The Probate Petition is opposed by one of the Petitioner's sisters, Nayana Ulhas Raut. She has filed a Caveat and an Affidavit in Support. In this she takes various grounds including that the Will is fraudulent and that the testator lacked the necessary testamentary capacity.

3. The Interim Application is filed for some reason in the Caveat in the Testamentary Petition. To this Interim Application are joined non only Nayana Raut but several others, including other siblings or heirs.

4. The Interim Application seeks that Nayana Raut be directed to withdraw her Caveat, or, in the alternative, that the Caveat be discharged or struck off. Alternatively, the Petitioner seeks a mandatory order that Respondents Nos. 1 to 4 be directed to enter into Consent Terms on the basis of an alleged Family Settlement

Deed dated 11th February 2020. A copy of that Settlement Deed in Marathi is annexed from page 63 onwards

5. According to the Petitioner, Nayana Raut and others accepted the Will in question in this document. The Settlement Deed mentions a Will dated 27th October 2010, not 27th October 2009. An explanation is attempted that this is because the Will was registered a year later. That cannot be assumed or presumed.

6. In any case, I do not see how this is a ground for discharging Nayana Raut's Caveat. At the trial of this Testamentary Suit, Nayana Raut may well be confronted with the family settlement document.

7. The Petitioner argues that Nayana Raut is now insisting that certain conditions be met, failing which she will not consent to the Grant of Probate. That is not my concern. The Petitioner is at liberty to negotiate an appropriate settlement of all family disputes with all siblings. In a Probate Petition, I cannot possibly compel the Respondents to enter into Consent Terms based on the document of 11th February 2020. If that is the Petitioner's intent, the Petitioner will have to file a Suit to enforce that family settlement. The submission that the Caveator, Nayana, should herself file a suit to avoid the family settlement is entirely misconceived.

8. There is no question of arriving at a conclusion at this stage that Nayana Raut 'has accepted the Will'. That is a matter that must await trial.

9. The Interim Application is wholly without substance. It is misconceived and not maintainable. It is dismissed. No costs.

**TESTAMENTARY PETITION NO. 973 OF 2019 IN
TESTAMENTARY SUIT NO. 20 OF 2021:**

10. The Testamentary Petition will now be renumbered as a Suit. By consent, it is taken up immediately for framing issues. Issues are framed and these are appended to this order.

11. The Plaintiff shall, on or before 26th April 2021, file (i) the affidavit(s) of the attesting witness(es) (ii) the evidence affidavit of the Plaintiff; (iii) an affidavit of documents; and (iv) a compilation of documents duly indexed and paginated. Copies of each of these will be served on the advocates for the Defendants on or before that date.

12. Suit to be listed for directions on 28th April 2021. If these directions have not been complied with by then, the suit and the petition will be dismissed on that date. On compliance with these directions as to filing, the matter will be taken up for marking of the Plaintiff's documents and further directions on that day, the fact that it may be listed for directions on that date notwithstanding.

13. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production of a digitally signed copy of this order.

(G. S. PATEL, J)

ISSUES FRAMED ON 22ND MARCH 2021

TESTAMENTARY SUIT NO. 20 OF 2021

IN

TESTAMENTARY PETITION NO. 973 OF 2019

Pramod Mahadev Thakur

...Plaintiff

Versus

Nayana Ulhas Raut & Ors

...Defendants

ISSUES

1. Whether the Plaintiff proves that the writing dated 27th October 2009 was duly and validly executed and attested in accordance with law as the last Will and Testament of the deceased, Thakur Mahadev Changu?
2. Whether the Plaintiff proves that at the time of the said Writing, the deceased was of sound and disposing state of mind, memory and understanding?
3. Whether the Defendants prove that the alleged writing was obtained by fraud and misrepresentation?
4. What relief and what orders?

(G. S. PATEL, J.)