

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

TESTAMENTARY PETITION NO. 2347 OF 2022

WITH

WILL NO. 984 OF 2022

IN

TESTAMENTARY PETITION NO. 2347 OF 2022

Rina Arjun Jagtiani

...Petitioner

Pamo Shabdanand Advani @
Parmanand Shabdanand Advani @
Pamo Advani @ P.S. Advani

...Deceased

- Mr. Amol Joshi i/b Prashant H. Chande, for Petitioner.

CORAM : MANISH PITALE, J

DATE : 12th SEPTEMBER, 2023

P. C. :

1. The present petition has been circulated on behalf of the Petitioner in the context of an objection recorded in the order dated 09th January, 2023, passed by the Testamentary Registrar.

2. This Court is informed that the present probate petition is uncontested. All the compliances have been ensured, but for the aforementioned objection raised by the Testamentary Registrar.

3. A perusal of the order dated 09th January, 2023, passed by the Testamentary Registrar shows that the objection is to the effect the affidavit of the attesting witness to the will, does not contain any averment about addition made to the will.

4. In this context, the learned Counsel appearing for the

Petitioner has invited attention of this Court to copy of the will filed along with petition at Exhibit "B". It is submitted that there is no addition to the body of the will and the said objection pertains only to the occupation and address of the attesting witnesses being recorded in handwriting, below the signature of the attesting witnesses.

5. In that context, the learned Counsel for the Petitioner has further invited attention of this Court to the affidavit of one of the attesting witnesses, placed on record with the petition. It is submitted that the contents of the said affidavit satisfy the requirement of the law and therefore, the said objection ought to be overruled, so that the probate can be granted.

6. This Court has perused the copy of the will at Exhibit "B", which is dated 19th November, 2014. A perusal of the affidavit of one of the attesting witnesses does show that it satisfies the requirement of law, inasmuch as the attesting witness stated about his presence and that of the petitioner who is the executor as well the beneficiary, at the time when the will was executed.

7. A perusal of the copy of the will would show that below the signatures of the attesting witnesses, their names, occupation and addresses have been handwritten. According to the learned Counsel appearing for the Petitioner, the Testamentary Registrar has opined

that this amounts to addition to the will and in that context the objection is raised that there is no averment in the affidavit of attesting witnesses as regards such addition to the will.

8. This Court is convinced that there is no addition to the body of the will, in the sense that the contents of paragraph nos. 1 to 9 thereof, do not show any addition or overwriting. It cannot be said that the details of the names, occupations and addresses of the attesting witnesses below their signatures in handwriting would amount to “addition to the will.” Therefore, the objection raised by the Testamentary Registrar that there is no averment in the affidavit of attesting witness as regards alleged “addition to the will” is unsustainable.

9. Accordingly, it is directed that said objection stands overruled and if the Petitioner has otherwise ensured compliances in this uncontested petition, consequent steps shall be taken by the Testamentary Department at the earliest.

(MANISH PITALE, J.)