

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

INTERIM APPLICATION NO.1671 OF 2024
IN
CAVEAT IN TESTAMENTARY (L) NO.3208 OF 2024
IN
TESTAMENTARY PETITION NO. 649 OF 2023

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Vaibhav Kantilal Dattani ...Applicant
Versus
Prameykant Devchandbhai Kakkad ...Respondent

WITH
INTERIM APPLICATION (L) NO.13851 OF 2024
IN
CAVEAT IN TESTAMENTARY (L) NO.6530 OF 2024
IN
TESTAMENTARY PETITION NO. 649 OF 2023

Vaibhav Kantilal Dattani ...Applicant
Versus
Nalinkant Devchandbhai Kakkad ...Respondent

WITH
INTERIM APPLICATION (L) NO.13848 OF 2024
IN
CAVEAT IN TESTAMENTARY (L) NO.6531 OF 2024
IN
TESTAMENTARY PETITION NO. 649 OF 2023

Vaibhav Kantilal Dattani ...Applicant
Versus
Jaykrushna Devchandbhai Kakkad ...Respondent

WITH
INTERIM APPLICATION (L) NO.13886 OF 2024
IN
CAVEAT IN TESTAMENTARY (L) NO.6532 OF 2024
IN
TESTAMENTARY PETITION NO. 649 OF 2023

Vaibhav Kantilal Dattani

...Applicant

Versus

Madhavi Nitin Raicha

...Respondent

**WITH
INTERIM APPLICATION (L) NO.1676 OF 2024
IN
CAVEAT IN TESTAMENTARY (L) NO.6543 OF 2024
IN
TESTAMENTARY PETITION NO. 649 OF 2023**

Vaibhav Kantilal Dattani

...Applicant

Versus

Tushar Devchandbhai Kakkad

...Respondent

Mr. Dhishan Kukreja a/w Sujay Dube, Ms. Chandni Sabnani i/b. Arvind Manghirmalani for the Applicant in IA No. 1671 of 2024, IAL No. 13851 of 2024, IAL No. 13848 of 2024, IAL No. 13886 of 2024, IA No. 1676 of 2024.

Mr. Aseem Naphade a/w. Ms. Janhavee Joshi, Mr. Harshesh Kakkad i/b. Ambika Singh, for Caveators in Caveat Nos. 139 of 2024, Caveat (L) Nos. 6530 of 2024, 6531 of 2024, 6532 of 2024 and 6543 of 2024.

CORAM : N. J. JAMADAR, J.

DATE : NOVEMBER 25, 2024

ORDER

1. The applicants, who are the petitioners in the Testamentary Petition for the grant of Probate of the registered Will dated 3rd March, 2022 of Prafulbala @ Prafulabai Haridas Dattani (the deceased), have preferred these applications for initiating action under section 340 read with 195 of the Code of Criminal Procedure, 1973 (the Code) and direct the Registrar of this Court to file a complaint against the respondent/caveator, in each of the

applications, for having committed the offences punishable under sections 191, 192, 193, 196, 199, 200 and 209 of Indian Penal Code, 1860 (the Penal Code).

2. As all the applications proceed on an identical premise, it may be apposite to consider the background facts, relative position of the parties and then note the facts in one of the applications as a representative application.

Background facts :-

3. Prafulbala @ Prafulabai Haridas Dattani (the deceased) died at Rajkot on 22nd March, 2022. At the time of her death, she had a fixed place of abode at Santacruz (w), Mumbai and left the property within Greater Bombay and in the State of Gujrat and throughout India. The deceased had executed the last Will and Testament dated 3rd March, 2022. The petitioners have been named as the executors in the said Will. The deceased died issueless. The husband of the deceased had predeceased the deceased. The deceased had inherited the property from her husband.

4. The petitioners No. 1 and 2 are the sons of the brother of the deceased's husband. Petitioner Nos. 3 and 4 are the grand nephews of the deceased's husband. The caveators in Caveat (L) No. 3208 of 2024, 6530 of 2024, 6531 of 2024 and 6543 of 2024, namely,

Prameykand, Nalinkant, Jaykrushna and Tushar, are the sons of the predeceased sister of the deceased. Madhavi Raicha, the caveator in Caveat (L) No. 6532 of 2024 is the daughter of the deceased's father's brother i.e. a cousin.

Caveats :-

5. Each of the caveators have filed affidavits in support of the caveat. Prameykant Kakkad, Nalinkant Kakkad, Jaykrushna Kakkad and Tushar Kakkad have affirmed that they are the maternal nephews of the deceased. Thus, they are Class II heirs of the deceased. Therefore, the caveators are entitled to file a caveat as they have absolute right, title and interest in the estate left by the deceased. Madhavi Raicha, the caveator in Caveat (L) No. 6532 of 2024, has also made similar assertions in the affidavit in support of the caveat.

Applications for initiating action for perjury :-

6. The petitioners/applicants have filed these applications asserting, inter alia, that the caveators have made several false statements in the affidavits in support of the caveats, deliberately and mala fide. In particular, the assertions in paragraph Nos. 1, 5 and 6 of the affidavit in support of the caveat that these applicants

are the Class II heirs of the deceased are false to the knowledge of the caveators. Since succession to the estate of the deceased, who was a female Hindu, is governed by the provisions of section 15 of the Hindu Succession Act and there is no dispute over the fact that, the source of the property left behind by the deceased, was traceable to her husband, the caveators, who are the heirs of the father of the deceased, are not entitled to succeed to the estate of the deceased.

7. In addition, the caveators have propounded a prior Will dated 22nd June, 2018 and filed a petition for the grant of Probate in the Court of Principal Civil Judge, Rajkot being Misc. Application No. 1175 of 2022 and in the said petition they have made a false statement that they are the legal heirs of the deceased and therefore the citations were not required to be issued. By making these false statements on oath, the applicants averred, the caveators have attempted to play a fraud on the Court. These acts on the part of the caveators tend to impede and prejudice the administration of justice and also pollute the stream of administration of justice.

8. In the affidavits in reply filed on behalf of the caveators, it is contended that the claim to the estate of the deceased is based on the Will dated 22nd June, 2018 left behind by the deceased, and not

the assertion in the affidavit in support of the caveat that the caveators are the Class II heirs of the deceased (which is alleged to be false). Nor the said alleged false statements are deliberate or conscious. The statement in the affidavit in support of the caveat as regards the relationship between the caveators and the deceased, is a matter of fact. The assertion that the caveators are Class II heirs of the deceased is a matter of legal error and not a false statement of fact. The caveators have also tendered an apology for the said legal error.

Submissions :-

9. I have heard Mr. Kukreja, learned counsel for the applicants/petitioners, and Mr. Naphade, the learned counsel for the caveators.

10. Mr. Kukreja, would urge that having realized that there is no escape from the imminent action for perjury, the caveators have conceded that they are not Class II heirs of the deceased, which was a blatant lie. According to Mr. Kukreja what exacerbates the situation is the fact that Prameykant and Nalinkant, the caveators in Caveat (L) No. 3208 of 2024 and Caveat (L) No. 6530 of 2024, are the advocates practicing in the testamentary jurisdiction. This works out the retribution of the submission on behalf of the

caveators that the claim that they are Class II legal heirs of the deceased was based on an incorrect impression of law. Mr. Kukreja, submitted that the fact that the said statement was neither bonafide nor on account of a legal error becomes clear if the pleadings in Civil Misc. Application No. 1175 of 2022 filed by the caveators for grant of Probate in respect of prior Will are considered in a correct perspective. Despite having been fully aware that the applicants and the other heirs named in the instant petition were the heirs of the deceased, a patent false statement was made in the said petition that there were no heirs of the deceased and thus citations were not required to be issued. Since the said statement was made, “in relation to” the proceedings in this Court, this Court can initiate action even in respect of that false statement under section 340 of the Code. To lend support to this submission, Mr. Kukreja placed a very strong reliance on the decision of the Supreme Court in the case of **Bandekar Brothers Private Limited and Another vs. Prasad Vassudev Keni and Others**¹.

11. Reliance was also placed on an order passed by this Court in the case of **Gurbir Shivdev Singh and Others vs. Naresh Nathulal Pal and Others**² wherein this Court, disapproved the conduct of the petitioner therein, of approaching the Court with a claim that they

1 (2020) 20 Supreme Court Cases 1.

2 2017 (5) Mh.L.J. 930.

were entitled to succeed under sections 8 and 9 where the deceased therein was a female and thus the succession would be governed by the provisions contained in section 15 read with 16 of the Hindu Succession Act. The Court, inter alia, observed that the petitioner had approached the Court with dishonest averments to pollute the pure stream of justice.

12. Mr. Kukreja further submitted that a proceeding for perjury stands on a different footing than an action in contempt. An act of contempt can be purged or remedied by the offending party. However, a perjury cannot be so remedied. Thus, an apology tendered or a statement made to correct the false statement, is not an answer to the action for perjury. To buttress these submissions, Mr. Kukreja placed reliance on the judgment of the Delhi High Court in the case of **Gokaldas Paper Products vs. Lilliput Kidswear Ltd. And Another**³.

13. In opposition to this, Mr. Naphade, the learned counsel for the caveator, at the outset, submitted that the caveators concede that they are not the Class II heirs of the deceased. However, according to Mr. Naphade, the inaccuracy of the assertion that the caveators are the Class II heirs of the deceased is borne out by the fact that in case of a female Hindu, there is no such distinction as Class I and Class II heirs. The caveats are primarily and predominantly based

3 2023 SCC OnLine Del 2191.

on the Will dated 22nd June, 2018 propounded by the caveators. Therefore, if the substance of the matter is looked at, according to Mr. Naphade, there is no justifiable reason to initiate action for perjury against the caveators, for a statement which appears to be ex facie legally infirm.

14. As a second limb of the submission, Mr. Naphade would urge that the said statement does not relate to a matter of substance nor can it be said to be material for the determination of the dispute at hand. The statement by which a party is alleged to have committed perjury must relate to the substance of the matter. It is well recognized that an action for perjury is not to be resorted to for every false statement or misstatement.

15. To lend support to this submission, Mr. Naphade placed reliance on the decisions of the Supreme Court in the cases of **Amarsang Nathaji vs. Hardik Harshadbhai Patel and Ors.**⁴; **Ashok Kumar Aggarwal vs. Union of India and Ors.**⁵; and **Dr. S.P. Kohli, Civil Surgeon, Ferozepur vs. High Court of Punjab and Haryana Through Registrar**⁶.

Consideration :-

16. I have given careful consideration to the rival submissions canvassed across the bar.

4 (2017) 1 Supreme Court Cases 113.

5 (2013) 15 Supreme Court Cases 539.

6 (1979) 1 Supreme Court Cases 212.

17. The facts, for the purpose of determination of these applications, appear to be incontrovertible. The deceased died as a widow and issueless. The deceased succeeded to properties left behind by her predeceased husband. Indisputably, the succession to the estate of the deceased, would be governed by the provisions contained in section 15 read with 16 of the Hindu Succession Act, 1956. The petitioners/ applicants claim to be the heirs of the husband of the deceased. The caveators claim to be the heirs of the father of the deceased. In such a situation, it is trite, the source from which the deceased female succeeded to the property assumes critical salience. Prima facie, it appears that the deceased had inherited the property from her husband.

18. In the backdrop of the aforesaid facts, it has to be appreciated whether the statement of the caveators that they are Class II heirs of the deceased and, thus, have a caveatable interest constitutes such a false statement as to warrant action under section 340 of the Code. As the relationship between the caveators and the deceased has not been seriously put in contest, the claim of caveators/Kakkads' that they are the maternal nephews of the deceased cannot be controverted. Thus, the assertion with regard to the relationship of the caveators with the deceased states a matter of fact.

19. Whether the claim of the caveators that they are Class II heirs of the deceased tainted with falsity ?

20. Mr. Kukreja, submitted that such a false statement was made with an oblique motive to delay and defeat the legitimate right of the petitioners and sustain the caveat. The fact that Prameykant and Nalinkant Kakkad are the practicing advocates was pressed into service to lend support to this submission. I find it rather difficult to accede to the submission of Mr. Kukreja that, Prameykant and Nalinkant, being practicing advocates are not expected to make such a mistake. An incorrect impression of law is not the prerogative of a layman.

21. This leads me to the pivotal issue of justifiability of initiation of action for perjury by invoking the powers under section 340 of the Code, 1973. The text of section 340 makes it explicitly clear that before initiating action thereunder, the Court must be satisfied that it is expedient in the interest of justice that an inquiry should be made. The Parliament has designedly used two expressions. “expedient” and “in the interest of justice”. Expediency to proceed under section 340 of the Code, 1973 is required to be determined not solely on the touchstone of the damage or injury caused. The propensity of the offending act to pollute the purity of the process of administration of justice needs to be evaluated. Even when the

Court finds that a prima facie case for the offence covered by clause (b) of sub section (1) of Section 195 of the Code is made out, it is not necessary for the Court to initiate action under section 340 if the Court does not find it expedient in the interest of justice to initiate such action. Thus, a mere satisfaction about the existence of a prima facie case to make out the offence punishable under section 193 of the Penal Code is not sufficient to resort to action under section 340 of the Code.

22. A useful reference in this context can be made to a Constitution Bench judgment of the Supreme Court in the case of **Iqbal Singh Marwah vs. Meenakshi Marwah**⁷ wherein the true import of the provisions contained in section 340 of the Code was expounded as under:-

23] In view of the language used in Section 340 Cr.P.C. the Court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1) (b), as the Section is conditioned by the words "Court is of opinion that it is expedient in the interest of justice." This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the Court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(i)(b). This expediency will normally be judged by the Court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of

⁷ (2005) 4 SCC 370.

evidence produced or given in evidence in Court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the Court may not consider it expedient in the interest of justice to make a complaint.

(emphasis supplied)

23. In the case of **Prithvi vs. State of Maharashtra and Others**⁸ a three Judge Bench of the Supreme Court enunciated in the clear and explicit terms that *“the text of sub section (1) of Section 340 of the Code makes it clear that the hub of this provision was formation of an opinion by the Court that it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed. It is important to notice that even when the Court forms such an opinion it is not mandatory that the court should make a complaint. This sub-section has conferred a power on the court to do so. It does not mean that the court should, as a matter of course, make a complaint. But once the court decides to do so, then the Court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be probed into.”*

24. In the case of **Dr. S.P. Kohli** (supra), the Supreme Court laid emphasis on the nature of the statement which was alleged to be false. In paragraph 17 of the said judgment, the Supreme Court observed, inter alia, as under:-

8 (2002) 1 Supreme Court Cases 253.

17] It is now well settled that prosecution for perjury should be sanctioned by courts only in those cases where it appears to be deliberate and conscious and the conviction is reasonably probable or likely. It is also well recognized that there must be a prima facie case of deliberate falsehood on a matter of substance and the Court should be satisfied that there is reasonable foundation for the charge.

(emphasis supplied)

25. In the case of **Ashok Kumar Aggarwal** (supra) after adverting to the previous pronouncements, the Supreme Court summarized the legal position as under:-

11] In view of the above, law on the issue can be summarized that in order to initiate prosecution for perjury, the court must prima facie reach a conclusion after holding preliminary inquiry that there has been a deliberate and conscious effort to misguide the court and interfere in the administration of justice. More so, it has to be seen whether such a prosecution is necessary in the interest of justice. The case is required to be decided in light of the aforesaid settled legal proposition.

(emphasis supplied)

26. In **Amarsang Nathaji** (supra) the Supreme Court again reiterated that even after forming an opinion as to the offence which appears to have been committed, it is not mandatory that a complaint should be filed as a matter of course.

27. The aforesaid pronouncements make it abundantly clear that the preliminary inquiry under section 340 of the Code has to proceed in two stages. First, whether a prima facie case of commission of the offence for which action for perjury is to be initiated, is made out. Second, even when such prima facie case is made out, the Court has to pose unto itself a further question, would

it be expedient in the interest of justice to initiate action for perjury.

28. Undoubtedly giving false evidence and filing an affidavit with assertion which are false to the knowledge of the Deponent is a grave matter and must be sternly dealt with. At the same time, a direction for initiation of action under section 340 without carefully evaluating expediency and that too on the strength of inconclusive and doubtful material tends to defeat the very purpose of investing such power in the Court. Every false statement need not be visited with an action for perjury. A false statement may have injurious consequence to an adversary in the proceedings. But that is not the test of expediency. An action for perjury would be expedient where the Court finds that the act complained of seriously impairs the administration of justice and pollutes its pure stream or tends to mislead the Court on a matter of substance material to the determination of the lis.

29. On the aforesaid touchstone, reverting to the facts of the case, in my considered view, the assertion that the caveators are the Class II heirs of the deceased does not satisfy the requirement for initiation of action for perjury, even if it is assumed that the said statement was made deliberately and mala fide. By any standard, such statement cannot be said to have the propensity to mislead the Court or pollute the stream of justice as Class II heirs of a female

Hindu is a misnomer if not completely non-sensical. Hindu Succession Act, 1956 does not make such distinction of Class I and Class II heirs in respect of a Hindu female.

30. Mr. Kukreja, the learned counsel for the applicants was justified in placing reliance on the decision of the Supreme Court in the case of **Bandekar Brothers** (supra) to buttress the submission that the offences covered under section 195(b)(i) of the Code, 1973 need not have to be committed only in the proceeding in the Court but can also be an offence alleged to have been committed, “in relation to” a proceeding in any Court. The words, “in relation to” expand the scope of its application and is an expression of comprehensiveness. The affidavits in support of the caveat indicate that the claim of caveatable interest is primarily based on the prior Will dated 22nd June, 2018 propounded by the caveators. The caveators have annexed a copy of the said petition to the affidavit in support of the caveat. The assertion in the said petition that, “there were no other heirs of the deceased, and, therefore, citations were not required to be issued” may fall within the mischief of the provision contained in section 282 of the Indian Succession Act, 1925. However, the veracity of that statement, and the circumstances in which such statement was made cannot be legitimately delved into these applications. I am, therefore, not

inclined to delve deep into the question as to whether an action under section 340 would be justifiable on the ground that the said statement was made, “in relation to” the instant proceeding. Resultantly, the applications deserve to be rejected.

Hence, the following order.

ORDER

- 1] The applications stand rejected.
- 2] No costs.

(N. J. JAMADAR, J.)