

Order Below Exh.158 in
Reg. Civil Suit No.72/2000

1. The plaintiff has preferred application for exhibiting certified copy of will produced at mark 156/1, wherein it has been contended by the plaintiff that, plaintiff has examined Sub-registrar, Surat as a witness and he has in his deposition produced certified copy of the said will and same is duly referred in his deposition. The witness has also identified the signature of maker of will and witnesses. The plaintiff has further contended in his application that the zerox copy of the will is produced vide mark 3/3, which has been referred by the plaintiff in his deposition vide Exh.91. Therefore, considering the deposition of plaintiff and his witness the certified copy of will produced at mark 156/1 is required to be exhibited.

2. Heard Ld. Adv. for the plaintiff as well as defendant. The respective arguments submitted on behalf of parties shall be considered herein after as and when required.

3. Having considering upon the facts of the present application and perusing record of present case, it is transpires that the plaintiff has preferred present suit contending that suit is properties were self-acquired properties of Prabhubhai Kuvarjibhai, who has in his life time executed a registered will on 16-09-1987. The plaintiff, by present application, has asked to exhibit said will which is produced at mark 156/1. The plaintiff has submitted his deposition

vide Exh.91, wherein he has referred zerox copy of will which is produced vide mark 3/3. Thereafter he has applied for calling upon Sub-registrar, Surat along with certified copy of will and in consequence of it Sub-registrar, Surat has been examined by the plaintiff vide Exh.156/1. Hence, according to plaintiff the will is referred in plaintiff's deposition produced at Exh.91 and in the deposition of the plaintiff's witness vide Exh.157. The question is that by referring is that the will by the plaintiff and his witness, Sub-registrar, Surat, it can be treated as exhibited? In this regard it is required to be considered the provision of Sec.68 of The Indian Evidence Act, which is as follows:

"If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied".

4. Therefore, considering the said provision and nature of document in question, the document referred to in the present application is required to be

proved by examining at least one attesting witness. Here plaintiff's present application does not reflect the contents that the will produced wide Exh.156/1 has been referred to in the deposition of any of the attesting witness of the will. Moreover, considering the said provision by referring will either in plaintiff's deposition or deposition of Sub-registrar, Surat, the requirement of proving of will does not fulfill or satisfy. Therefore, considering the facts of the application, the documents produced at mark 156/1 can not be considered as exhibited.

Even otherwise if the entire evidence produced by the plaintiff is considered and arguments advanced by the Ld. Adv. for the plaintiff is considered, it is the case of the plaintiff that the attesting witness of the will are died and therefore, their legal heirs have been examined to prove that will. In this regard the plaintiff has examined son of Chaganbhai Maganbhai, Shri Ishwarbhai Chaganbhai Patel and son of Pramabhai Vallabhbhai Patel, Shri Babubhai Pramabhai Patel vide Exh.151 and Exh.152 respectively. It is pertinent to note that the said witnesses have been examined on 01-09-2015 and on that day original or certified copy duly obtained from the Sub-registrar Office has not been produced in the present case. Moreover, if the deposition of the said witnesses are considered it is transpires that the said witnesses have been informed by their father with regard to execution of will and in that will their father have put their signatures as a witness and on the information given by their father they know the fact of execution of will by Prabhubhai Kuvarjibhai. Beside that no other fact about the will has been stated by the

said witnesses. No doubt the witnesses have stated that in the will their fathers signatures and they know their fathers signatures. So having considering the contention of deposition of the said witness, the very ingredients for proving will are absent. It is required to bring on record that the maker of will has singed before the attesting witness and attesting witness have also put their witness as a witness on the request of maker of will. If the attesting witnesses are died then signature of the attesting witness on the will is required to be proved. In the present case it is admitted that attesting witnesses are died. Their sons have been examined vide Exh.151 & Exh.152. Who in their deposition simply said that they know the signatures of their fathers but the documents in the question has not been referred to said witnesses and put the question that whether signature on the will is their father or not? Hence, in the absence of specific contentions it can not be said that the will and signature on the will has been duly referred to the attesting witnesses. Therefore, relying upon the deposition of the attesting witnesses too, as the very ingredients for proving will are not satisfied, the will in question can not be exhibited.

Hence, from the forgoing discussion this Court is of the view that present application is not maintainable and from the evidences adduced by the plaintiff, the will in question can not be exhibited. Therefore, following final order is passed by this Court in the interest of Justice:

::: ORDER :::

1. Plaintiff's present application Exh.158 is hereby rejected.
2. No order as to cost.

Pronounced in open Court today on 28th October, 2015.

28-10-2015

(Shakeel Ahmed Abdul Karim Nakum)
10th Addl. Sr. Civil Judge,
Civil Court, Surat.
U.I.C.No. GJ00652