

ORDER BELOW EXH.65

1. The present application filed by defendants Mr. B. T. Patel to exhibit the document produced vide mark-63/1 which is original Will on 17.12.2019.

2. I have heard Ld. Advocate for the defendants Mr. B. T. Patel who argued that, the document which is Will, executed by deceased Ilaben A. Brahmbhatt in favour defendant no.1. The document is produced in original and the same has been referred by the witness of the defendants in his examination-in-chief vide Exh.64. Therefore, the Will is required to be exhibited. Ld. Advocate Mr. B. T. Patel argued that the present application is required to be granted.

3. I have heard Ld. Advocate for the plaintiffs Mr. Pathan who argued that, the document which is produced vide mark-63/1 is only notarized document, which is not registered before Sub-Registrar. The Will is created to defeat the right of the plaintiffs after filing of this suit, therefore, the Will cannot be exhibited at this stage. Hence, the Ld. Advocate for the plaintiffs argued that the present application may be dismissed with cost.

4. I have heard both the Ld. Advocate for the parties. Read the present application and perused the record. On perusal of record, it transpires that the witness of defendants has submitted examination-in-chief vide Exh.64 on 17.12.2019 and Will was produced vide mark-63/1. The document which is to be exhibited is notarized Will, and therefore, Section 68 of the Indian Evidence Act, 1872 is attracted. On plain reading of Section 68, the Will cannot be considered as an evidence unless and until the witness are not examined. Therefore, at this juncture, the Will which is produced mark-63/1 is not considered to be evidence on the ground of non-examination of attesting witness. Hence, I pass the following in the interest of justice.

ORDER

- The present application is hereby rejected.
- No order as to costs.

Signed and pronounced in the open Court today i.e. 30th day of the month of December, 2019.

Place : Nadiad
Date : 30/12/2019

(Sirajuddin Ganibhai Mansuri)
Principal Senior Civil Judge
Nadiad (Dist: Kheda)
GJ00603