

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

**TESTAMENTARY SUIT NO. 3 OF 1998
IN
TESTAMENTARY PETITION NO. 531 OF 1995
WITH
TESTAMENTARY SUIT NO. 4 OF 1998
IN
TESTAMENTARY PETITION NO. 532 OF 1995**

Joseph G.D'souza & Anr.

.. Plaintiffs

Vs.

N. Murzello & Anr.

.. Defendants

Mr.Denzil D'mello a/w. Ms. Geeta Sonawane and Mr.Austin Fernandes for plaintiffs.

Mr.V.Y. Sanglikar for defendants.

CORAM : K.R.SHRIRAM, J.

DATE : 18TH APRIL, 2017

P.C.

TESTAMENTARY SUIT NO. 3 OF 1998

1 Name : Anthony Murzello (DW-1),
 Age : 74 years,
 Occu. : Self employed.
 Add. : Roseville, 1st floor,
 63, S.K. Bole Road,
 Dadar, Mumbai 400 028.

ON S.A.

Further cross-examination of DW-1 by Mr. D'mello for the plaintiff :

(For the sake of convenience, wherever required, cross-examination is recorded in Question and Answer form)

Mr.D'mello states that he will not press question,15 which is already recorded on 17th February 2017 before the Commissioner, to which there is no answer.

Q.16 : In paragraph 4, you have stated that “*We all including the deceased, resided under one roof in the same residential complex-Roseville*”. Can you explain what due mean by ‘under one roof’?

A. : Roseville was a big bungalow with ground + 1st floor. We were living on the ground floor and my aunt was living on the 1st floor. That was upto January 1956. Roseville compound was fairly big so my parents built another house in the same compound and we shifted from the ground floor into the new house. There was no wall in between the two houses and though, we moved to the new house, we lived like one family. The house in which we moved into, was closer to the road, road facing and my aunt lived in the house behind. The house that we moved into, in the same compound also was of ground + one floor. This was the position in 1956. Now that old house, in which we moved in 1956, has been expanded and a floor has been raised. Therefore, it has ground + two floors now. Similarly, the original Roseville bungalow where the deceased and we all had lived together, has been redeveloped into a ground + 3 floors building and the deceased was living on the second floor rear of the building. That was a 1200 sq.ft. flat.

Q.17 : Were you able to see the flat of the deceased from the flat in

which you were living?

A. : No.

Q.18 : Would you able to say who all were residing with the deceased in 1989-90?

A. : Her nephew Joe Murzello, his wife and two children.

Q.19 : When you say, you were close to the deceased, can you explain how close were you and how it signifies?

A. : She would always call me and my family on my birthday and I also used to call her and wish her on her birthday. She also used to give me a gift on my birthday and if she is unable to come, she would sent it with somebody.

Q.20 : How often did you visit the deceased at her residence?

A. : On two occasions when I went, I was told that she is unwell or she is sleeping or she is in the toilet etc., therefore, I stopped going after that.

Q.21 : How long ago was your these two visits?

A. : It was sometime in 1986.

Q.22 : Therefore, would I be correct to say that between 1986 until 1992, when she died, you never met the deceased?

A : We were always told that she is sleeping or she is unwell, but I agree that I did not meet her between 1986 until her death.

Q23 : Though you had not met her for six years, did you atleast greet her on Christmas or Easter?

A : It was not possible because we could not contact her.

Q.24 : Between 1986 to 1992, did you have a telephone in your home ?

A : In 1987, we got a telephone at home.

Q.25 : Since the deceased had a telephone at her residence, did you call on her birthday or Christmas and Easter to wish her on telephone?

A : We did not because we never had her number.

Q.26 : Since according to you, you were very close to her and the deceased was also very fond of you, you did not make atleast an attempt to get her telephone number so that you can atleast speak to her?

A : No.

Q.27 : Did you request any third party like the Parish Priest or somebody else to help you to establish contact with the deceased?

A : No.

Q.28 : Did you lodge any complaint with the Police or any other party alleging that you were restrained from meeting your aunt?

A : No.

Q.29 : I put it to you that save and except your bare words that you were very close to the deceased and the deceased was very fond of you, there is nothing to show that was the position?

A : I agree. There is nothing.

The Witness adds:

Even my uncle who was living in flat adjacent to the flat of

the deceased in which she was living, was also not allowed to meet the deceased.

Q.30 : Will I also be correct to say that except your bare words that you were not allowed to meet the deceased, there is no other evidence to support your stand?

A : I agree.

Q.31 : I put it to you that you have falsely stated that you were close to your Aunt or she was fond of you or you were restrained from meeting the deceased?

A. : I disagree.

Q.32 : Since you have stated you had no contact with the deceased from 1986 until her death, I put it to you that your averment in paragraph 6 of your affidavit, Exh.D-1/1 that the deceased was virtually made a prisoner and was not allowed to go out of her room on the second floor in Roseville, is in correct?

A. : Whoever had gone to her house, came and told me that they never saw the deceased in the Hall or anywhere and they were told that either she was sleeping or unwell or in the toilet.

Q.33 : Mere from somebody telling you, you had no personal knowledge?

A. : I agree.

P.C. : In paragraph 7 of your affidavit in the second sentence, you have stated *“In 1989-90, the deceased was extremely ill and was wheel-chair borne.....”*. Since you have not seen

the deceased between 1986 to 1992, what is the basis to you to make this statement?

A. : Her family informed me.

Q.34 : What is the basis do you have to say in your evidence that the deceased used to consult Dr.Miss.Sunita Pinto for her medical treatment?

A. : Dr.Mrs.Denise Pinto mother of Dr. Sunita Pinto used to have a clinic just about 50 yards from our house and I know my Aunt used to consult her. In 1974, my Aunt was also admitted in their nursing home for ten days.

Q.35 : Other than 1974 hospitalization, do you have any knowledge of the deceased allegedly consulting Dr.Sunita Pinto at any other time?

A. : She used to visit to Dr.Sunita Pinto and Dr.Denise Pinto on and off.

Q.36 : What is the basis for you to make this statement?

A. : In 1992, the wife of Joe Murzello had gone to see Dr.Sunita Pinto and Dr.Sunita Pinto was giving her a letter for admitting the deceased to Holy Family Hospital.

Q.37 : Do you have any evidence to substantiate your answer to the last question?

A. : No such evidence.

Q.38 : I put it to you that you have falsely stated that the deceased used to consult Dr.Sunita Pinto?

A. : I disagree.

Q.39 : I put it to you that you have given false evidence in the

matter?

A. : I disagree.

2 Cross-examination closed.

No re-examination.

The witness discharged.

3 Mr.Sanglikar for the defendants states that the defendants wish to lead evidence of one more witness and the evidence will be filed and copy served within five weeks from today.

4 The matter be listed for directions on 23rd June 2017 for directions.

(K.R. SHRIRAM, J.)