

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

***TESTAMENTARY SUIT NO.5 OF 1999
IN
TESTAMENTARY PETITION NO.806 OF 1998***

***ALONG WITH
TESTAMENTARY SUIT NO.12 OF 1999
IN
TESTAMENTARY PETITION NO.1087 OF 1998***

Pradeep Kumar Anand .. Plaintiff
Vs.
Dilip Kumar Anand .. Defendant

Mr.Zubin Behramkamdin a/w Ms.Vidya Nair and Mr.M.G. Gawde for the plaintiff.

Mr.Prateik Parija for the defendant.

***CORAM : R.D. DHANUKA, J.
DATE : 23rd January 2019***

Name : Dilip Laxmichand Anand
alias Dilip Kumar Anand (DW-1)
Age : 69 years
Occupation : Retired
Address : B-601, Rajpipla CHS Ltd.
Linking Road, Santacruz (W),
Mumbai – 400 054.

P.C.:

. Pursuant to the request made by both the parties, further cross-examination of DW-1 Mr.Dilip Kumar Anand is recorded in Court from the stage it was left incomplete before the learned Court Commissioner.

CROSS EXAMINATION OF MR.DILIP KUMAR ANAND BY MR.BEHRAMKAMDIN, LEARNED COUNSEL FOR THE PLAINTIFF :-

Witness on oath :

Q. 60 : Do you now remember that you have given evidence in Suit No.12 of 1999 and was cross-examined therein ?

A. : Yes.

(Witness is shown answer to question no.25).

Q. 61 : What do you mean by saying that your father has not put Pradeep's name in the Will, when Pradeep has been mentioned at various places in the Will ?

A. : When I replied to question no.25 that my father has not put the name of Pradeep in the Will, I meant to say that my father has not made any bequest in favour of Pradeep. All bequests were in favour of the wife of Pradeep.

Q.62 : I put it to you that your answer to earlier question no.61 is false because one of the bequest is stated in paragraph 9 of the Will in favour of Pradeep ?

A. : It is not correct.

Q.63 : Did you speak with any of the three persons named as executors in your father's Will after the death of your father ?

A. : Yes. I spoke to them several times but they did not come forward as Pradeep, Sunil and Anup had abused them.

Q.64 : Did you tell the three executors or any of them that it was their

duty to apply for probate of your father's Will inspite of Pradeep allegedly had abused them ?

A. : I told them several times but they told me that since they were insulted, they would not come forward to take any steps to apply for probate.

Q.65 : When did you speak to Mr.Khare for the first time regarding your father's Will ?

A. : I spoke to him for the first time after the death of my father when Mr.Khare asked me for details of my father's assets.

Q.66 :Can you produce before this Court the alleged letter received by you from Mr.Khare ?

A. : It is already on record.

Q. 67 : After receipt of the above mentioned letter by you from Mr.Khare, when you allegedly spoke to him, did you ask him about your father's original Will ?

A. : Since a copy of the Will was already given to me, there were no question of asking to him about the original Will.

Q.68 : Who gave you the copy of the Will for the first time ?

A. : All three executors together gave me a copy of the Will for the first time.

Q.69 : When did you get a copy of your father's Will ?

A. : It was on 40th day of my father's death.

Q.70 : Besides three executors who else was present on your father's ritual day ?

A. : My mother, all brothers and two sisters were present.

(Witness is shown his reply to question nos.28 and 29)

Q.71 :When Pradeep allegedly abused three executors, besides those alleged abuses, what else Pradeep told those three executors ?

A. : After abusing those three executors, Pradeep went away.

(Witness is shown question no.31 and answer thereto).

Q.72 : What do you mean by “some other moral relation” between Neelam Anand and your father ?

A. : What I meant is that my father used to listen to Neelam and relied on her and did not believe his own wife.

Q.73. I put it to you that your answer to question no.72 is false and after thought because you have not mentioned anything about behaviour of your father in the affidavit of evidence or affidavit in support of the caveat ?

A. : It is not correct.

Q.74 : Since when have you been residing in flat of Raj Pipla property ?

A. : Since 1984.

Q.75 : How did you get possession of flat in Raj Pipla property ?

A. : On dissolution of HUF properties, my father gave this flat to me

and gave cash to my other brothers.

Q.76 : When did you speak for the first time to Mr.Khare and Admiral N.N.Anand about giving evidence in this matter ?

A. : I spoke to Mr.Khare for the first time within six month from the date of demise of my father.

Q.77 : I put it to you that you never visited the Aradhana Nursing Home prior to the death of your father ?

A. : It is not correct.

Q.78 : It is your case that since your brothers and sisters visited your father's Aradhana Nursing Home, why did you say that brothers and sisters may not be aware of your father's state of mind?

A. : I cannot say whether my brothers and sisters were aware about state of mind of my father or not when he was admitted in the Aradhana Nursing Home.

(Witness is shown paragraph 7 of the affidavit in lieu of examination-in-chief).

Q. 79 : According to you, who are the persons who knew that the deceased was allegedly “mentally unfit” at the time of making his Will ?

A. : It were all doctors and brothers who were aware of this situation and therefore they did not give any records to me.

Q.80 : Can you tell the names of any of the doctors you have referred to in above answer?

A. : Doctor Ranglani, the owner of the hospital. I also moved the High Court to get hold of the documents. He, however, informed this Court that all the records were destroyed in rain.

Q. 81 : How many doctors were treating your father and knew about the status of alleged mental unfitness of your father ?

A. : There were many doctors. I do not remember the names of the doctors.

Witness Volunteers :-

There were three to four doctors.

Q.82 : According to you, who are the persons involved in the controversy mentioned by you in paragraph 7 of your affidavit ?

A. : It was basically the hospital and Mr.Pradeep Anand.

Q.83 : I put it to you that all the allegations made by you in your affidavit of evidence and affidavit in support of the caveat about the deceased not having mental capacity at the time of signing of the Will are false ?

A. : It is not correct.

Q.84 : I put it to you that your allegation that the said Will was forged is false ?

A. : I never said that the Will was forged. What I said was that the deceased did not know what he was signing at the time of executing the Will.

Q.85 : Did you ask your sisters to join in this matter ?

A. : Yes. I asked but they refused to file caveat. Their husband did not allow them to file caveat along with me.

Q.86 : Did you ask either of sisters to give evidence in your favour in this matter ?

A. : No.

Q.87 : Did you speak to your mother after coming to know about your father's Will ?

A. : Yes. I spoke to her.

Q.88 : Can you tell the Court about the conversation between you and your mother ?

A. : My mother told that she was not aware what Pradeep wrote in the Will and thus she could not make any comment.

Cross-examination of the witness is concluded. No re-examination. Witness is discharged. Learned counsel for the defendant closes the evidence.

. Place the matter on board for 'marking of documents' which are not marked so far in so far as Suit No.5 of 1999 is concerned on 20th February 2019.

R.D. DHANUKA, J.