

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
TESTAMENTARY SUIT NO. 21 OF 2006
IN
TESTAMENTARY PETITION NO. 699 OF 2005

Mohan Gurbaxani and Anr. Plaintiffs

VERSUS

Jer Jawhar Thadani Defendant

ALONGWITH
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 1186 OF 2004

Jer Jawhar Thadani Plaintiff

VERSUS

Mohan Gurbaxani & Anr. Defendants

Mr.K.C.Munshi, i/b. Mr.B.G.Saraf for the Plaintiffs in TS/21/2006 and for the defendants in S/1186/2004.

Ms.Deepti Panda, a/w. Mr.Mitesh Naik, i/b. M/s. Dhru & Co. for the defendant in TS/21/2006 and for the Plaintiff in S/1186/2004.

CORAM : R.D. DHANUKA, J.

DATE : 19th DECEMBER, 2018

P.C.

At the request of the learned counsel for the plaintiff and by consent of learned counsel for the defendant no.3, further cross examination of the DW-1 is recorded in court.

NAME : Darius Rutton Kavasmaneck (DW-1)

AGE : 66 years

OCCUPATION : Business

ADDRESS : 626, Parsi Colony, Dadar, Mumbai – 400 014.

ON S.A.

Q.181 : Mr.Kavasmaneck, in various portion of your earlier evidence, you have stated that you cannot read the handwriting of the deceased. Is that correct ?

Ans. : It is correct to say that in my earlier evidence recorded so far, I have stated that I cannot read the handwriting of the deceased.

Q.182 : It is correct to say that in the document compilation produced by you, there are several documents which are in handwriting of the deceased ?

Ans. : It is correct that several documents forming part of the compilation tendered by me contains the documents in the handwriting of the deceased.

183. The documents which are in the handwriting of the deceased which are relied upon by me in my compilation of documents, I could read. However, the documents proposed to be relied upon by the plaintiff, I am unable to read.

Q.184 : Your attention is invited to various documents.

(Witness is shown questions 8 to 11, 32, 33, 42, 43, 65 and 66)

Do you agree that you have not answered these questions ?

Ans. : I do not agree that I have not answered these questions.

Q.185. There are several other questions which are marked by this court particularly Exs. A, C-1, C-2, E-colly (Article 8), E.colly. (Article 9), E colly. (Article 10) and Ex.M (Article 22) the portion of which would show that relationship of the deceased with Jer were not cordial and straight. Your deposition is to the contrary. Is that correct?

Ans. : It is not correct.

Q.186 : You are asked to reconcile what you have stated in your evidence affidavit with the contents of these documents and state whether anything additional you wish to say apart from what you have already said in answers to questions 8 to 11, 32, 33, 42, 43, 65 and 66 ?

Ans. : I have already stated what I wanted to state while replying to say these questions. I do not want to add anything.

Q.187 : Please produce a copy of the document of title/conveyance by which Western Chemical Industries (P) Limited purchased the flat in Jupiter Apartment ?

Ans. : I maintain my earlier answer that since the said document is not relevant in my opinion, I am not bound to produce it.

(Witness is shown photocopy of the deed of transfer dated 1st October,2014 between Hyderabad (Sind) National Collegiate Board and Western Chemical Industries (P) Limited and Darius Rutton Kavasmaneck.)

Q.188 : Is this the document by which the Western

Chemical Industries (P) Limited and you purchased the flat in Jupiter Apartment from Hyderabad (Sind) National Collegiate Board ?

Ans. : It is true that by this document, the Western Chemical Industries (P) Limited and myself had purchased the flat in Jupiter Apartment.

P.C. : Since the document was shown to the witness in furtherance of the earlier question already asked and since the witness has identified this document, the document is marked as **Ex.'DD'**.

(Witness is shown the alleged letter dated 16th August,2003 marked as Ex.D1/73.)

(This question is asked by the learned counsel without prejudice to the rights and contentions of the plaintiff that the said document marked as D1/73 is forged document.)

Q.189 : Can you show any other letter on record written by the deceased either to you or to Jer or to the plaintiff no.1 in which the deceased has subscribed his signature as allegedly appearing in Ex.D1/73?

Ans. : All the letters which were in possession of my mother were handed over to me. I have produced all such letters on record of these proceedings.

Q.190 : I put it to you that Ex.D1/73 is a fabricated and got up document. Do you agree ?

Ans. : I do not agree.

Q.191 : I put it to you that the alleged signature appearing on Ex.D1/73 is not the same as any other signature of the deceased on any other document which is on record. Do you agree ?

Ans. : It is not correct.

Q.192 : I put it to you that the Ex.D refers to X-2.

Ans. : It is not correct.

Q.193 : I put it to you that X-2, X-4 (Articles 6 and 19) are photocopies made of the same document. Do you agree ?

Ans. : I do not agree.

[witness is shown Ex.K (posted on Article 19)]

Q.194 : Since Ex.K, being a post it stuck on X-4, I put it to you that Ex.K refers to X-4. Do you agree ?

Ans. : I do not agree.

Q.195 : I put it to you that the original of the X-2 and X-4 is in your custody. Do you agree ?

Ans. : I do not agree. They are not in my custody.

Q.196 : I put it to you that since X-2 and X-4 were written to you by your mother, the original thereof could not have been with the deceased ?

Ans. : I did not receive any such letter from my mother. I do not know whether the deceased had taken the original of these letters from my mother or not.

Q.197 : I put it to you that Ex.D explains the authenticity of X-2 and X-4. Do you agree ?

Ans. : I do not agree.

(Witness is shown Ex.H [Article 16])

Q.198: According to you which document does Ex.H refers to ?

Ans. : I was not a party of these correspondence. I will not be able to say as to whether Ex.H refers to which document.

Q.199 : I put it to you that Ex.H refers to X-3. Do you agree?

Ans. : I was not party to these documents. I am thus not able to say whether Ex.H refers to X-3.

(witness is shown Article 17 'handwritten portion on the back of the envelop forming part of X-3'.)

Q.200 : Can you read that what is written on the back of the envelop ?

Ans. : I can read what is written on the back of the envelop. It reads 'Letter from Homai Jan. 11, 93'.

(witness is shown X-3)

Q.201 : Will it be correct to say that this letter is original letter?

Ans. : I cannot say.

Q.202 : Is it correct to say that in the original envelop the letters were posted in those days from America ?

Ans. : The envelop appears to be original because there is postal stamp affixed on it.

Cross examination of the witness is concluded by the learned counsel for the plaintiff.

No re-examination. Ms.Panda, learned counsel for the defendant no.3 states that evidence of defendant no.3 is closed. Statement is accepted.

Place the matter on board for directions on **28th January,2019** for marking of documents.

[R.D. DHANUKA, J.]