

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

**TESTAMENTARY SUIT NO.53 OF 2000
IN
TESTAMENTARY PETITION NO.358 OF 2000**

Deepak Suresh Hamand & Ors.)....Plaintiffs

V/s.

Sunil Rajaram Hamand)....Defendant

Ms.K.C.Nichani i/by Deepa Kamath for plaintiffs.

Mr.Rahul C. Mestry for the defendant.

CORAM : K.R.SHRIRAM,J

DATE : 7.2.2017

P.C.:-

Name : Dr.Sudarshan Rajaram Kasturi

Age : 47 years

Occup. : Doctor

Address : 169/81, Panchsheel Niwas, 5th Kamathipura, M.R.Road,
Mumbai-400 008.

PW-1 on S.A

Further Examination-in-chief : by Ms.Nichani for the plaintiffs.

1 I have seen the original Will and confirm that it is the same Will that was signed by the deceased on 8.12.1998 and I further confirm that at the foot of it is my signature with rubber stamp and also signature of the other attesting witness Prabhavati Eknath Hamand.

Cross-Examination : by Shri Rahul C.Mestry for the defendant

Q.1 : What is your mother tongue ?

Ans. : Telugu.

Q.2 : What is your date of birth ?

Ans. : I was born on 11.4.1969.

Q.3 : When did you start practice as a Doctor ?

Ans. : In 1997.

Q.4 : Do you have a clinic ?

Ans. : Yes.

Q.5 : What is the address of your clinic ?

Ans. : A/17, 202, Pratiksha Nagar, Sion Koli wada, Mumbai-22.

Q.6 : Apart from your private practice are you attached to any hospital or organization ?

Ans. : No.

Q.7 : Do you have any specialization in your practice ?

Ans. : I am a general Practitioner.

Q.8 : That the deceased was your patient for several years, is not mentioned in the affidavit that you filed along with the petition ?

Ans. : Yes.

Q.9 : I put it to you that your statement in Exh.P1/1 that the deceased was your patient for several years is an incorrect statement ?

Ans. : I disagree.

Q.10 : On how many occasions have you met the deceased ?

Ans. : Several times.

Q.11 : Could you explain “what do you mean by several times” ?

Ans. : By saying several times what I mean is that the deceased used to visit my residence around once a week or so.

Q.12 : What was the purpose of the deceased several visits to your residence ?

Ans. : He used to come to consult for cough, cold, fever, dysentery etc.

Q.13 : What kind of treatment did you advise the deceased ?

Ans. : Generally what is done for cough, cold, fever & dysentery. I know the deceased did not suffer from any other major ailment.

Q.14 : Was this cough, fever, cold and dysentery recurring for the deceased ?

Ans. : Yes.

Q.15 : Why according to you was the ailments that you mentioned recurring ?

Ans. : It is a contagious disease.

Q.16 : What kind of medication were you prescribing to the deceased ?

Ans. : General medications like paracetamol etc.

Q.17 : Would any of the medicine that you prescribed have any side effect ?

Ans. : Each and every medicine has a side effect.

Q.18 : Did you ever make any house visits to the place of the deceased apart from on 8.12.1998 ?

Ans. : Yes. Sometime the deceased was unable to come to my residence so I used to visit.

Q.19 : Whenever the deceased come to your residence, did he come alone or was he accompanied by somebody else ?

Ans. : Alone.

Q.20 : Was there any occasion for you to refer the deceased to any specialist doctor ?

Ans. : No.

Q.21 : Did the deceased consult any other doctor apart from you ?

Ans. : I do not know.

Q.22 : Do you maintain records of your patients ?

Ans. : Yes.

Q.23 : How many years record do you maintain for the patients ?

Ans. : One year.

Q.24 : Have you retained the records of the deceased ?

Ans. : No.

Q.25 : In Exhibit P1/1 you have stated that the deceased requested you on 8.12.1998 to visit his residence to attest a Will. How did the deceased request you ?

Ans. : Through a messenger Mr.Sandeep.

Q.26 : When you visited the residence of the deceased on

8.12.1998 did you go alone or you were accompanied by somebody else ?

Ans. : Alone.

Q.27 : When Sandeep came and asked you to visit residence of the deceased, was it on the same date i.e., 8.12.1998 or earlier ?

Ans. : Same date, 8.12.1998.

Q.28 : What was the time when you went to the residence of the deceased ?

Ans. : Around 5.00 – 6.00 P.M.

Q.29 : Who are the family members that you have mentioned in paragraph-3 of Exhibit P1/1 in the 4th line ?

Ans. : Prabhavati, Sandeep and Deepak.

Q.30 : Was Suresh Hamand also present on 8.12.1998 ?

Ans. : Yes.

Q.31 : Would I be correct to say that your statement in paragraph-3 of Exhibit P1/1 that the deceased had already prepared the said Will in his own hand writing in Marathi is not mentioned in the affidavit that you filed along with the petition ?

Ans. : Yes.

Q.32 : Would you also agree that your statement in Exhibit P1/1 that Prabhavati Eknath Hamand in your presence enquired from the deceased whether he was sure of his action in preparing the said Will to which the deceased answered in affirmative, is not reflected in the

affidavit that you have filed along with the petition ?

Ans. : Yes.

Q.33 : I put it to you that you did not see the deceased writing the Will ?

Ans. : Correct. I did not see him writing the will.

Q.34 : I put it to you that the deceased did not put his signature in your presence ?

Ans. : He put signature in my presence.

Q.35 : Are you aware about the educational qualification of the deceased ?

Ans. : No.

Q.36 : Is it correct if I say that the deceased used to only sign in Marathi and not in English ?

Ans. : No. Because this Will was signed in my presence in English.

Q.37 : Apart from the signing of this Will, have you seen the deceased sign any other document ?

Ans. : No.

Q.38 : Before signing the Will did you see the contents of the Will ?

Ans. : Yes.

Q.39 : Who put the signature on the Will, was it you or other attesting witness ?

Ans. : Prabhavati Hamand signed first.

Q.40 : Did you examine the deceased for his health and mental

condition before you attested the Will ?

Ans. : Yes. He was mentally and physically fit.

Q.41 : You were called to attest the Will only as a Doctor or as someone who knew the deceased well ?

Ans. : As a doctor.

Q.42 : Are you aware that the deceased was unemployed for very long time ?

Ans. : Yes.

Q.43 : I put it to you that the deceased was in disturbed state of mind for several years ?

Ans. : I disagree.

Q.44 : What was the age of the deceased when he executed the Will ?

Ans. : Around 55 to 60.

Q.45 : Since you have stated the Will was already prepared when you went to the house, how do you say that the Will was in the deceased own hand-writing ?

Ans. : I do not know.

Q.46 : In your affidavit in evidence you have said "the said deceased had already prepared the said Will in his own hand writing in Marathi. What is the basis for you to make the statement when you have now said the witness did not write the Will in your presence ?

Ans. : I do not know whether it was in his hand-writing.

Q.47 : So, therefore, do you agree that your statement in the affidavit that the deceased had prepared the Will in his own hand-writing in Marathi is incorrect ?

Ans. : No.

Q.48 : Did you ever have any occasion to see hand-writing of the deceased ?

Ans. : No.

Q.49 : What is the basis for you to say the Will was written in his own hand-writing ?

Ans. : Sandeep told me that it was written by the deceased.

Q.50 : Were you paid any fees for visiting the house on 8.12.1998 ?

Ans. : Visiting fees was paid.

Q.51 : How much were you paid ?

Ans. : Rs.300/-

Q.52 : Were you paid anything extra for attesting the Will ?

Ans. : No.

Q.53 : I put it to you that the deceased did not sign the Will in your presence ?

Ans. : I disagree.

Q.54 : I put it to you that the contents of your affidavit Exh.P1/1 is false ?

Ans. : I disagree.

Q.55 : On whose instructions did you prepare affidavit Exh.P-1/1 ?

Ans. : Advocate of the plaintiff.

Q.56 : Who drafted the affidavit ?

Ans. : Advocate.

Q.57 : On whose instructions was the affidavit prepared ?

Ans. : Advocate.

Q.58 : Did you go through the entire affidavit before you affirmed it ?

Ans. : Yes.

Q.59 : Is it correct that people have complained about your professional qualification ?

Ans. : No.

2 At this stage, the counsel for the defendant requests the matter be stood over by 3 weeks to enable him to get material regarding the complaints against the witness of his professional qualification etc.

 Mr.Mestry states that if there are any documents, he will provide a copy thereof and also inspection to the plaintiffs on or before 28.2.2017. Statement accepted.

3 On the next date witness is directed to produce the original together with photo copy of his B.A.M.S qualification

certificate and the registration certificate of the registration number referred to in the rubber stamp in the Will. A copy of these to be made available to the advocate for the plaintiff as well as defendants not later than 28.2.2017.

4 Stand over to 7.3.2017.

(K.R.SHRIRAM,J)