

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
TESTAMENTARY SUIT NO. 27 OF 2008
IN
TESTAMENTARY PETITION NO. 155 OF 2008**

Jagtaran Singh Waryamsingh Sethi ... Plaintiff

V/s.

Parmider Mayank Pandya & Ors. ... Defendants

Mr. Vishal Hegde a/w R. P. Shirole, Aishwarya I, S. V. Rao, P. Dhumale & A. Apte
i/b Samudra Legal for the Plaintiff.

Ms. Snehal Paranjape a/w Shrihivasan Mudaliar, Dinkar Desai i/b Federal &
Company for Defendant No.1.

Mr. Amardev J. Uniyal a/w B. L. Mangale & S. S. Karkada for Defendant Nos. 3 &
4.

CORAM : ARIF S. DOCTOR, J.

DATE : 05TH MARCH 2025

P.C. :

1. Oath administered.

PW-1:	Jagtaran S. Sethi
Age:	77 years
Address:	4, Shanker Sagar BLDG, Sophia College Lane, Mumbai-400 026.

Examination-in-chief of PW-1 on S.A.

I have filed affidavit of evidence dated 9th September, 2009. I have

signed at the foot of the said affidavit and I identify my signature. I affirm that whatever stated in the said affidavit is true to my knowledge and correct. It was prepared under my instructions.

2. The witness is discharged.

3. The affidavit in lieu of evidence dated 9th September, 2009 of the plaintiff is taken on record and marked PW-1/1. The plaintiff also relies upon compilation of documents, which is tendered and the same is taken on record. In respect of the documents, learned Counsel for the Defendants has tendered a statement of admission/denial, which is also taken on record. On the basis of the same, this Court is proceeding to mark the documents.

4. At the outset, learned Counsel pointed out that the certain documents which have already been marked as exhibits by consent vide an order dated 2nd December, 2009.

5. Since the documents in compilation of documents have been denied, the same are marked as subject to proof. Hence, marked the documents as follows:

<u>Sr. No</u>	<u>Dates</u>	<u>Particulars</u>	<u>Document Reference for convenience</u>
1.	3.01.2006	<u>Exhibit- A</u> Notarized true copy of the Will	P-7

		and Testament of the deceased Kulwant Kaur Waryam Singh Sethi.	
2.	01.07.1940	<u>Exhibit-C</u> Middle Standard examination certificate for Indian Girls Kulwant Kaur daughter of Harnam Singh having Passed in second Division with English as one of the Subjects issued by Registrar, Departmental Examination of Public Instruction Punjab at Lahore.	P-8
3.	26.03.2962	<u>Exhibit-D</u> Cheque No- 532 dated 26.03.1962 for Rs. 32,000/- Paid to M/s Parbat Patel builders Shankar Sagar building for purchase of Flat No- 4 from her single Account No- 596 of Dena Bank, Matunga, Bombay -19 Branch, Entry Shown in the pass-book of the said Bank a/c of the deceased.	P-9
4.	20.08.1963	<u>Exhibit- F</u> Xerox Copy of the register of Members in Form "I" Of Shanker Sagar Co-operative Housing	P-10

		Society showing Mrs. Kulwant Kaur's Name with Second name of Late Waryam Singh regarding flat 4 shanker Sagar. The name of Late Waryam Singh deleted on 29.06.1993 upon his death Ref-M.C meeting 29.06.93 wherein Nomination of the Plaintiff and Satinderpal Singh Sethi is recorded.	
5.	-	<u>Exhibit- G</u> Xerox Copy of Form "J" of Shanker Sager Co-operative Housing Society Showing Name of the members as Mrs. Kulwant Kaur for Flat No- 4 of 1 st Floor.	P-11
6.	24.12.1963	<u>Exhibit- H</u> Xerox copy of the entry in the share Register of the Shanker Sagar Co-op Housing Society Showing Share Certificate No- 4 and 5 shares from No. 16 to 20 showing the name of the deceased Kulwant Kaur to whom the shares were allotted.	P-12
7.	13.02.1944	<u>Exhibit- I</u> Indian Post office saving Bank Pass Book at Quetta A/c 40151 in	P-13

		the name of the deceased Kulwant Kaur daughter of Late Harnam Singh C/o Parbati (deceased's Mother) A/C opened on 13.02.1944. After partition this account was transferred to Matunga Post Office with Bombay entry dated 28.02.1949 Bombay A/C No. 766268 –Last entry being 13.03,1962.	
8.	13.11.1984	<u>Exhibit- K(1) to K(3)</u> Plaintiff went to reside at Flat No- 4 1 st Shaker Sagar in Oct.1984. His Son Pawansingh admitted to Breach Candy School – Admission & Others fees Receipts Deceased returned from USA in December 1984.	P-14
9.	24.10.1985	<u>Exhibit- L</u> Birth Certificate of Amrit Kaur daughter of Plaintiff showing the residence of Shaker Sagar .	P-15
10.	16.04.1987	<u>Exhibit- M</u> Ration Card Issued – Late Waryam Singh Head of the Family bearing the names of deceased, plaintiff his wife Ranjit Kaur and his both children's.	P-16

11.	June 1987	<u>Exhibit- N</u> Pawan Singh admitted to Green Law School 1 st Standards.	P-17
12.	Around April-May	<u>Exhibit- O</u> Draft of letters by Late Waryam Singh drafted in his own hand for admission of Pawan Singh to various schools near residence.	P-18
13.	June 1988	<u>Exhibit – P</u> Report Book of Amrit Kaur Sethi of Nursery Standard for the Year 1988/89.	P-19
14.	08.06.1988	<u>Exhibit- Q</u> Xerox Copy of the Agreement for Sale of Bungalows No. 11-B, Mini Land – Tank Road, Bhandup (W), by Kulwant Kaur & 3 Ors. And Shri Shivramsingh Samman Singh & Anr.	P-20
15.	01.08.1992	<u>Exhibit- S</u> Letters from Swaranjit Kaur (Pinky) Defendants No.4 to Plaintiff Jagtaran Singh Sethi .	P-21
16.	31.10.1992	<u>Exhibit- T</u> Copy of Form No, 15B – Form of Nomination. Nominees plaintiff and Satinder Pal Singh Sethi witnessed by Ranjeet Kaur Sethi &	P-22

		Mr. E.A Khan.	
17.	29.06.1993	<u>Exhibit- U</u> Nomination placed in the meeting of the Managing Committee for being recorded in its minutes. It is recorded in the Nomination Register at Sr. No- 4.	P-23
18.	02.07.1993	<u>Exhibit- V</u> Communication of the Nomination having been recorded to the deceased Kulwant Kaur under cover of Society Letter dated 02.07.2993.	P-24
19.	15.07.1993	<u>Exhibit- W</u> Letter from the Swaranjit Kaur (Pinky) defendants No- 4 to Plaintiff Jagtaran Singh Sethi.	P-25
20.	12.08.1996	<u>Exhibit- Y</u> Letter from Swaranjit Kaur (Pinky) Defendants No- 4 to Jagtaran	P-26
21.	August 1996 to November 1996	<u>Exhibit- Z</u> Email from Rajshree Malgaonkar, rehabilitation Therapist/Occupational Therapist B.S.C (OT) P.G.D.R confirming that deceased Kulwant Kaur was under her care fir her neuro- surgical interventions by Dr. Turel and	P-27

		further conforming that Mrs. Sethi was successfully independent in her mobility following her rehabilitations. This Email is received from Australia where she is presently Settled.	
22.	08.05.1998 to 14.05.1998	<u>Exhibit- AA</u> The Photographs of the deceased who attended the wedding of Randeep Singh Sethi, the only son f the Kultaran Singh Sethi defendants No.2 on 10.05.1998 at Noida New Delhi and Receptions at Khalsa College, Bombay on 14th May 1998 – Travelled by Rajdhani Train to & from. i. 09.05. 1998 – Mehandi function at Noida. The deceased is playing Dholak. ii. 10.05.1998 – with the Groom and Others iii. 10.05.1998 – deceased blessing the couple after marriage . iv. 15.05.1998– receptions at Khalsa College Mumbai– deceased with	P-28

		Defendants No-2 and his Wife Mrs. Ripudaman and the parents of the Bride. v. Two invitations cards one for marriage ,another for reception.	
23.	4.08.1999 to 3.08.2006	<u>Exhibit- AB</u> The Pass Book of the pensions a/c No. SB13138 in the name of the deceased Kulwant Kaur for Family Pensions being Bank – Wardens Road Branch in the sole name of the deceased and operated regularly under her signatures from March 1992 till her death in February, 2007.	P-29
24.	Living Certificates	<u>Exhibit- AC</u> Four in all bearing the Signatures of the deceased and verification thereof by UCO Bank official submitted to pay and accounts Office, Government of Maharashtra Bandra Covering the years 2001, 2004, 2005.	P-30
25.	Telephone Diary	<u>Exhibit- AD</u> Mostly Maintained by the	P-31

		deceased as she regularly spoke to friends, relatives bearing in her handwritings names and numbers of repairs of her bath room in 2002.	
26.	Photograph 2005	<u>Exhibit- AE</u> 1. With varan wife if Jagjit Singh Defendants No- 3 who came to visit India in 2005 using cordless Phone. 2. Alone sometimes using cordless.	P-32
27.	05.05. 2005 to 10.05.2005	<u>Exhibit-AF</u> Professor Kuldeep Singh – the brother- in – law of the deceased died- He being Waryam Singh ji's Younger Brother and _also the husband of deceased younger sister Mohinder Kaur. 1. Taken at the time of body being taken for cremation on 07.05.2005 2. Taken with her sister in law Mrs. Gurshan being the sister of Prof. Wyrarn Singh at the residence of Kuldip singh where	P-33

		deceased stayed from 05.05.2005 to 11.05.2005.	
28.	Jan 2003	<u>Exhibit- AG</u> Photograph of the deceased Kulwant Kaur with Satinder Pal Singh Sethi cutting fruits when he was in India .	P-34
29.	July 2009	<u>Exhibit- AH</u> Photograph of the deceased Kulwant Kaur Showing with fruits on the dinning table.	P-35
30.	28.11.2004	<u>Exhibit – AI</u> <u>Society Letters addressed to deceased.</u>	P-36
31.	18.11.2005	<u>Exhibit- AK</u> Notice to all Ration Card holders.	P-37
32.	16.11.2005	<u>Exhibit- AL</u> Pratigya Patra from Ration Card holders deceased Kulwant Kaur submitted the relevant ration shop	P-38
33.	20.12.2006	<u>Exhibit- AM</u> Society Circulars dated 20.12.2006 on the revenue whereof the deceased has made accounts in her owns hand of fruits purchased by her .	P-39

6. It is noticed that the documents namely Affidavit of E.A. Khan (Exhibit-AN), Affidavit of Mrs. Mohinder Kaur, Sister of deceased (Exhibit-AO) and Affidavit of Mrs. Gursharan Chawa- Retired Deputy Director Education – New Delhi (Exhibit-AP) are third party affidavits. Hence, the same are not marked.

7. Except the documents marked as per order dated 2nd December, 2009 and Paragraph 6 as above, rest of the documents mentioned in the above table are marked as Exhibit P-7 to Exhibit P-39.

8. The matter shall now proceed to record the cross-examination of PW-1. Hence, I appoint Mr. Aditya Bapat to act as Court Commissioner for recording of cross-examination. The details of the Court Commissioner are as follows:

Court Commissioner	Mr. Aditya Bapat
<i>Address</i>	2 nd Floor, Wadia Building, Dalal Street, Mumbai-400001.
<i>Mobile</i>	9822303900
<i>Email</i>	aditybapat@gmail.com

9. All cross examination shall be conducted strictly in question and answer form.

10. The Commissioner is at liberty to exercise discretion under Order XVIII, Rule 4(4) of the Code of Civil Procedure, 1908 to note the demeanour of the witness, wherever necessary.

11. The Commissioner is directed to video-record the cross-examination and submit the original audio visual recording along with the Commissioner's report to the Registry.

12. Costs of the commission shall be borne by the plaintiff.

13. The plaintiff shall also pay costs of Rs.500/- per hearing to the Court Clerk, who attends the Commission with the Court papers. This is required since these Clerks attend the Commission, in addition to their duties and outside their normal working hours.

14. The Commissioner shall not permit any application for adjournment on the dates fixed, except where absolutely unavoidable.

15. Since the Suit is of 2008, let the cross-examination of the PW-1 be completed within a period of three months from today.

(ARIF S. DOCTOR, J.)