

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
TESTAMENTARY AND INTESTATE JURISDICTION  
MISCELLANEOUS PETITION NO. 66 OF 2012  
IN  
TESTAMENTARY PETITION NO. 498 OF 2009  
WITH  
NOTICE OF MOTION NO. 17 OF 2013  
IN  
MISCELLANEOUS PETITION NO. 66 OF 2012  
IN  
TESTAMENTARY PETITION NO. 498 OF 2009**

Pushpa S Patki & Ors ...Petitioners  
*Versus*  
Vinod C Done & Anr ...Respondents

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**Ms Samidha Sangai, i/b Dhanuka & Partners, for the Petitioner.**  
**Mr Sandip Parikh, with Mrs Dhanshree G, i/b Bilawala & Company,**  
*for the Respondent.*

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**CORAM: G.S. PATEL, J**  
**DATED: 21st February 2018**

**PC:-**

1. The evidence is complete in the Miscellaneous Petition, which seeks seeking revocation of the probate granted to the

Respondents. The learned Commissioner, Mr Mayur Agarwal, is requested to file his final report by 16th March 2018. The records will be arranged as directed by the Court Associate and the matter will be listed for hearing and final disposal on 5th April 2018 on the weekly board.

2. In the meantime Mr Parekh who appears for the Respondent to the Revocation Petition (the Probate Petitioner) says that two documents were shown to the Revocation Petitioner's second witnesses Ms Rohini Ramchandra Naik. He submits that these documents should be taken up for being marked.

3. The first document is an Affidavit dated 18th February 2010 filed in the Probate Petition itself. It is not strictly necessary to mark this Affidavit as an exhibit since it is already part of this proceeding. It is sufficient to clarify that the Affidavit of 18th February 2010 will be read in evidence without a copy being separately marked as an exhibit and both sides may freely refer to it during final arguments.

4. The second document is the disputed Will itself. This was shown to the Revocation Petitioners' second witness PW2 Mrs Rohini Ramchandra Naik on 21st March 2017 and she was asked if she could identify the signatures of the two attesting witnesses and whether she knew the first attesting witness one Mr JV Visani. She answered both questions in the negative.

5. The consequence is that the Will itself cannot be proved strictly speaking by virtue of this cross-examination. However, since

the document was shown to the witness it will be marked in evidence as **Exhibit “R4”** but with the clarification that the marking of this document as such does not indicate that the Revocation Petitioners have accepted its authenticity, validity or due execution or attestation. It is marked merely to indicate the document with which the witness PW2 was confronted.

**(G. S. PATEL, J)**