

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

TESTAMENTARY SUIT NO. 73 OF 2019  
IN  
TESTAMENTARY PETITION NO. 1459 OF 2018

SANTOSH  
SUBHASH  
KULKARNI

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SANTOSH SUBHASH  
KULKARNI  
Date: 2024.07.06  
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Narshibhai Govind Patel & anr.

...Plaintiffs-  
Petitioners

**Versus**

Damyanti Chandulal Patel

...Defendant -  
Caveator

Karamshibhai Kachara Patel alias  
Karamshi Kachara (Sankhala)

...Deceased

Ms. Disha Mehta, i/b Bilawala & Co., for the Petitioners.

CORAM: N. J. JAMADAR, J.  
DATED: 4<sup>th</sup> JULY, 2024

**PC:-**

1. Heard the learned Counsel for the plaintiffs.
2. The suit is posted for settlement of issues.
3. Perused the draft issues filed on 6<sup>th</sup> February, 2021. In the order dated 13<sup>th</sup> June, 2023, the Court recorded that the draft issues were submitted on 18<sup>th</sup> September, 2021 and since none had appeared for the defendant, to give an opportunity to the defendant, settlement of the issues was deferred with a request to the Counsel for the plaintiff to serve notice on the Advocate for the defendant.

4. The learned Counsel for the plaintiff submits that in terms of the said order notice was duly served on the Advocate for the defendant.
5. None appears for the defendant.
6. I have perused the pleadings and draft issues.
7. The following issues are settled.

**: I S S U E S :**

- (1) Do the plaintiffs prove that the writing dated 18<sup>th</sup> March, 2023 is duly executed and attested last will and testament of the deceased and it is legal and valid?
  - (2) Do the plaintiffs prove that the deceased was in a sound and disposing state of mind, memory and understanding, at the time of execution of the Will?
  - (3) Does the defendant prove that the deceased never executed the Will?
  - (4) In the alternative, does the defendant prove that the alleged Will was got executed under duress?
  - (5) What order and decree?
8. The plaintiffs shall, on or before 18<sup>th</sup> July, 2024 file (i) the evidence affidavit of the plaintiffs' first witness; (ii) an affidavit of documents; and (iii) a compilation of documents

duly indexed and paginated. Copies of each of these will be served on the advocates for the Defendants before that date.

9. The defendants shall, on or before 1<sup>st</sup> August, 2024 file (i) an affidavit of documents; and (ii) a compilation of documents duly indexed and paginated. Copies of each of these will be served on the advocates for the plaintiffs on or before that date.

10. Discovery and inspection is to be completed and statements of admission and denial are to be exchanged on or before 16<sup>th</sup> August, 2024.

11. On the plaintiffs complying with these directions, the matter will be taken up for marking of the plaintiffs' documents and further directions on 22<sup>nd</sup> August, 2024, irrespective of the caption under which the matter appears.

**[N. J. JAMADAR, J.]**