

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

TESTAMENTARY SUIT NO.12 OF 2013

IN

TESTAMENTARY PETITION NO.561 OF 2010

Mallika Madhukant Jhaveri

....Plaintiff

V/s.

Jasmine Sanjay Shah

....Defendant

WITH

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1965 OF 2010

Jasmine S. Shah

....Plaintiff

V/s.

Mallika Madhukant Jhaveri & Ors.

....Defendants

Mr. R.A. Shaikh for the plaintiff.

Ms. Mallika Madhukant Jhaveri, plaintiff present in person.

Ms. Manjari Shah a/w. Ms. Namrata Shah and Ms. Yashvi Panchal i/b.
M/s. K. Ashar and Co. for the defendant.

CORAM : K.R.SHRIRAM,J

DATE : 7th MARCH, 2017

P.C.:-

Name : Lolakshi Shekhar Kunder (PW-1)

Age : Adult

Occupation : Housewife

Address : 304, Dipex Building, 'B' Wing,
Namdeo Path Road, Dombivli (East),
District - Thane.

On S.A.

**1 Further cross examination of PW-1 by Ms. Manjari Shah
for the caveator.**

For the sake of convenience, the evidence is recorded in
question and answer format.

Q. 3 : When did you go on maternity leave in the year 2008?

Ans. : After 15th April. My child was born on 25th April, 2008. It is a boy. I was discharged from the nursing home may be after three or four days. I stay in Dombivli in a one bedroom, hall and kitchen flat. In 2010 in that flat, my husband, I, my sister Deepa and my daughter Sakshi were living. My husband is running a bar-cum-restaurant after taking it from the owner for 20 years contract period. He did not have any fixed time of going or coming. He would go whenever he wanted to and he came at any time either at 1 or 2 AM. My daughter was studying in LKG or UKG in the year 2008. I am not sure whether in April, 2008 the school was open or closed. When I returned home after delivery, my mother was there to help me. After some time I engaged a lady to give bath to the child.

Q. 4 : Where was Mr. Madhukant Jhaveri (the deceased) living?

Ans. : Nepean Sea Road.

Q. 5 : How much time does it take to travel from Dombivli to Nepean Sea Road?

Ans. : I do not know.

Q.6 : Have you ever been to the house of the deceased at Nepean Sea Road?

Ans. : Yes.

Q.7 : How much time did you take at that time to go to his house?

Ans. : I went from the office to his house and came back to office.

Q.8 : How much time did you take to come from Dombivli to your office at Zaveri Bazar?

Ans. : Over 1 ½ hours one way.

Q.9 : Did anybody inform you in advance that the deceased and his wife Mallika were to visit you in your house in Dombivli in May, 2008?

Ans. : No, but they came some time in the morning hours. When they came home, it was my sister who opened the door. I was in the bedroom.

Q.10 : What dress were you wearing at that time?

Ans. : I was in my nighty.

Q.11 : Did you change your dress when you saw them?

Ans. : No. I continued to wear the same nighty.

Q.12 : Did the deceased carry anything in his hand when he came to your house?

Ans. : He had a bag in his hand. I do not remember what Mallika was carrying. Both of them came to the bedroom to see the child. Mallika gave me a cash cover.

Q.13 : When did you first see the Will?

Ans. : On the same day it was signed.

Q.14 : Do you remember of how many pages was the Will?

Ans. : Either 3 or 4 pages. The deceased told me that this is his Will. He was carrying this Will in a plastic bag which he took out from his bag. All this happened at my residence when the deceased and Mallika had visited to see my child.

Q.15 : Where was this Will signed in your house?

Ans. : I had actually signed four Wills. Two before his death and two after his death.

Q.16 : Which was the location in your house where the Will was signed?

Ans. : It was in the bedroom.

Q.17 : On how many pages of the Will did the deceased sign?

Ans. : I do not remember but he signed atleast one page for sure.

Q.18 : In paragraph 7 of your affidavit (Exhibit P-1/1) you have stated "10th" was written by the deceased. How many times did the deceased write that?

Ans. : Only once. The deceased used his own pen to write that.

Q.19 : Which pen did you use to sign? Did you take from deceased?

Ans. : I did not use Madhukantbhai's pen but I used my own pen.

Q.20 : Which pen did Deepa use?

Ans. : I do not remember.

Q.21 : After signing the Will who took the Will?

Ans. : Madhukantbhai himself took the Will.

Q.22 : After that date did you ever see the Will again?

Ans. : I saw it in the Crime Branch office. After that I saw it in the court when I came to give evidence.

Q.23 : What was your designation in the office?

Ans. : I was working as Senior Accountant. I started working with Madhukantbhai from 1992 onwards. The company in which I was working has been taken over by Ketan Karani.

Q.24 : Is Madhukant Jhaveri's Mobile No.9820025410?

Ans. : Yes.

Q.25 : Who is using this number now?

Ans. : This number was initially used by Ketan Karani but I am not sure whether he is using it any more. I do not know.

Q.26 : Which was the firm in which you were employed by Mr. Madhukant Jhaveri?

Ans. : Rajesh Enterprises. It was a partnership firm. Mallika Jhaveri and Madhukant Jhaveri were the partners.

Q.27 : As an Accountant, what all you were doing?

Ans. : In fact my role was more like an over all in-charge. I was taking care of accounts, stock market or office purchases, income tax and sales tax, administration, etc. I was also taking care of the personal accounts of Madhukantbhai.

Q.28 : According to you, who all are the members of Madhukant Jhaveri's family?

Ans. : His wife, his daughter – Jasmine, Jasmine's daughter – Mansi and his mother.

Q.29 : Do you know when Madhukant Jhaveri's mother died? Was it before Madhukant Jhaveri died or did she die after him?

Ans. : Before he died.

Q.30 : Were you aware that Jasmine was physically challenged, i.e., she was partially blind and partially deaf?

Ans. : I know she could not hear but she could read big words. She underwent a surgery and after that she has been able to hear properly. Whenever I used to talk to her she could hear it well. I am not aware about the present situation. When I used to talk to her she

was using hearing aid. She could read big words easily but for small fonts, she was using a magnifying glass.

Q.31 : Have you ever seen the Partnership Deed of Rajesh Enterprises?

Ans. : Yes.

Q.32 : Would it be correct to say that the partners were Mallika Jhaveri and Madhukant Jhaveri as a HUF?

Ans. : Yes.

Q.33 : Did you attend the wedding of jasmine?

Ans. : Yes.

Q.34 : Did Madhukant Jhaveri take a flat for Jasmine in the same building as the one in which he was living?

Ans. : Yes, he did, "भाड़े पर लिया".

Q.35 : Would I be correct to say that Jasmine underwent a surgery for her ears in 2004?

Ans. : I do not remember the year but it was after 2002. I do not remember where it was done.

Q.36 : Did you know that the deceased spent about Rs.12 lakhs to Rs. 15 lakhs on the surgery?

Ans. : I do not know.

Q.37 : Do you know how much the hearing aid cost?

Ans. : I do not remember the price, but it was of good quality and a very expensive one.

The wedding of Jasmine was also done in a very lavish scale. Even after her marriage, the deceased used to take care of the

expenses of Jasmine, her husband and the grand child. He also took care of the expenses of the mother-in-law of Jasmine.

Q.38 : Did Madhukant Jhaveri spend for the holiday expenses of Jasmine, her husband and the grand child?

Ans. : Best to my knowledge, after her honeymoon she has not gone for any holiday or vacation.

Q.39 : In 2008 did Madhukant Jhaveri, accompanied by his wife, daughter and son-in-law, go to New Zealand for a vacation?

Ans. : Yes.

Q.40 : Would I be correct to say that Madhukant Jhaveri was really doting on Jasmine and she was everything for him?

Ans. : Yes.

Q.41 : Even after Ketan Karani took over Rajesh Enterprises, you continued to work as an Accountant and in the same role as you were under Madhukant Jhaveri?

Ans. : After Ketan Karani took over, there were two Accountants and I was taking care of the factory accounts and also production in the factory.

Q.42 : Is Ketan Karani related to Mallika and Jasmine?

Ans. : Ketan Karani is the son of Mallika's brother.

Q.43 : When did Deepa, your sister, get married?

Ans. : In 2009 or 2010.

Q.44 : Did Ketan Karani come for the wedding?

Ans. : No. The wedding was in Mangalore. There was no reception in Mumbai.

Attention of PW-1 is drawn to a photograph print out of which was taken out from a Facebook page.

Q.45 : Is this Deepa's wedding photograph?

Ans. : This is not Deepa's wedding photograph. Deepa is not there in the photograph.

The photograph is taken on record and marked Y-1 for identification.

Q.46 : Is Deepa still working in Rajesh Enterprises, i.e., the same firm where she was working when she attested the Will?

Ans. : She is not working here anymore. She is now residing in Dubai.

Q.47 : When did Deepa join Madhukant Jhaveri's office? Do you remember?

Ans. : I am not sure, but it was in 2001. She was working in M/s. Virgin Metallic Chemicals Private Limited, another company of Madhukantbhai. She continued working in M/s. Virgin Metallic Chemicals Private Limited even after her marriage.

Q.48 : Did Ketan Karani take over M/s. Virgin Metallic Chemicals Private Limited?

Ans. : No.

Q.49 : Who is now running M/s. Virgin Metallic Chemicals Private Limited?

Ans. : Mallika Jhaveri.

Q.50 : Do you know whether Mallika Jhaveri knows English?

Ans. : She does not know much English.

Q.51 : Who is assisting Mallika in running M/s. Virgin Metallic Chemicals Private Limited?

Ans. : I do not know. I am not working with her anymore.

Q.52 : In 2008 what was your salary?

Ans. : About Rs.30,000/-.

Q.53 : Now what is your salary?

Ans. : Rs.60,000/-.

Q.54 : Was your salary being paid on time or are there any arrears?

Ans. : There are some arrears, and I am to be paid about 6 or 7 month's salary.

Q.55 : Where is your office now?

Ans. : I stopped working. I left the job in January, 2016 and at that time, my salary was Rs.60,000/-.

At this stage, Ms. Shah, counsel for the caveator states that the court will have to issue witness summons to the Senior Inspector Police, Malabar Hill Police Station to produce the original passport of the deceased. Mr. Shaikh, counsel for the plaintiff, on instructions states that if a photocopy of the passport is given to him, he will look at it and take instructions as to whether it is a photocopy of the passport of the deceased, and if it is so, he will have no problem in admitting the document. Ms. Shah tenders a photocopy of the passport

of the deceased and Mr. Shaikh, after showing the photocopy to his client, i.e., the petitioner, admits the document and states that the photocopy of the passport can be received in evidence.

Therefore, the photocopy of the passport of the deceased is received in evidence and marked **Exhibit D-1**.

Q.56 : Do you agree that this is a photocopy of Madhukant Jhaveri's passport?

Ans. : From page 1 of the photocopy of the passport which has a photograph of the deceased, I say that this is a photocopy of the passport of Madhukantbhai. Even the signature appearing on this page is the signature of Madhukantbhai.

Q.57 : How much time did Madhukant Jhaveri and Mallika spend in your residence when they visited in 2008?

Ans. : They left within one hour. They had tea and snacks in my residence.

Q.58 : Do you cook non-vegetarian food in your residence?

Ans. : Yes.

Q.59 : Were you aware that Madhukant Jhaveri was not eating in any place where non-veg is cooked?

Ans. : Madhukantbhai used to eat food from every staff member in the office.

Q.60 : I put it to you that Madhukant Jhaveri used to carry his own water bottle also to every place?

Ans. : No.

Q.61 : I put it to you that Madhukant Jhaveri and Mallika did not come to you house on 10th May, 2008?

Ans. : They had come.

Q.62 : I put it to you that on 10th May, 2008 Madhukant Jhaveri did not prepare his Will?

Ans. : I do not know when he prepared the Will, but when he came to my residence on 10th May, 2008 he came with the Will.

Q.63 : I put it to you that the Will was not executed on 10th May, 2008?

Ans. : I disagree.

Q.64 : I put it to you that because Ketan Karani has not paid your salary for 6 to 7 months, you are giving false evidence?

Ans. : I disagree. I have given evidence even before Crime Branch and Human Rights Commission two/three years ago.

Q.65 : I put it to you that you are giving evidence because you have been in the employment of Ketan Karani since March, 2009?

Ans. : I disagree.

Q.66 : I put it to you that even your sister Deepa has not attested the Will?

Ans. : I disagree. Deepa also signed and even I signed.

Q.67 : I put it to you that you have prepared this Will sitting with Ketan Karani and Mallika?

Ans. : I disagree.

Cross examination closed.

No re-examination.

Witness discharged.

2 Mr. Shaikh, counsel for the plaintiff, on instructions states that he closes his evidence.

3 Ms. Shah, counsel for the caveator tenders an affidavit dated 7th March, 2017 of the caveator praying for issuance of witness summons to Senior Inspector of Police, Malabar Hill Police Station to either personally come or designate an officer and produce the original passport bearing no.A2572681 which has been submitted to the Police on 23rd July, 2012 during the pendency of CC No.136/PW/2011.

4 The application is granted. The registry to issue witness summons to Senior Inspector of Police, Malabar Hill Police Station returnable on 30th March, 2017 to either come personally or depute an officer not below the rank of Sub-Inspector to give evidence and bring with him the original passport bearing no.A2572681.

5 Stand over to 30th March, 2017.

(K.R.SHRIRAM,J)