

Prasad T. Tendolkar vs 1) Seema Rebendra Datta Nee Seema Parab on 2 May, 2019

Author: R.D. Dhanuka

Bench: R.D. Dhanuka

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1

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

TESTAMENTARY SUIT NO. 65 OF 2009
IN
PETITION NO. 696 OF 2008

Catherine Datta

..... Deceased

Prasad T. Tendolkar
Hindu, Indian Inhabitant,
Having address at R-52,
2nd floor, Baria Mansion,
Opp. Mahatma Phule Market,
L.T. Marg, Mumbai - 3.

..... Plaintiff.

AND

1. Seema Parab,
401/B Surbhi, Jankalyan Nagar,
Malwani No.1, Malad (West),
Mumbai 400 095,

2. Diana G. Virwani,
603-B Nivedita Terrace,
65/2, Kedari Nagar, Wanawadi,
Pune 411 040,

3. Rebecca Datta nee Rebecca Dey,
A-17, Aashirwad,
Cross Road No.2,
Swami Samarth Nagar,
Lokhandwala Complex,
Andheri (East), Mumbai
400 053.

.... ... Defendants/
Caveators

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2

TS65.09 -corrected

Mr.Vishal Kanade, a/w. Mr.Rajeev Carvalho, i/b. Mr.Sanjay Gawde
for the Plaintiff.

Ms.Rebecca G. Dey, Defendant no.3 present in person.

Ms.Seema Parab, Defendant no.1 present in person.

Ms.Diana Virwani, Defendant no.2 present in person.

CORAM : R.D. DHANUKA, J.
RESERVED ON : 22nd December, 2019
PRONOUNCED ON : 2nd May, 2019

JUDGMENT :

1. By Testamentary Petition No.696 of 2008 which is converted into the Testamentary Suit No.65 of 2009, Mr. Prasad T. Tendolkar who claimed to be an executor under an alleged Will and Testament dated 16th October, 1996 alleged to have been executed by Mrs. Catherine Rebendra Datta (hereinafter referred to as the said deceased) seeks grant of probate. The said deceased died on 9th December, 1996 leaving behind her four legal heirs and next of kin according to the Indian Succession Act which is applicable to the parties. The said deceased left behind him a son Mr. Rajiv Rebendra Datta and three daughters i.e. Ms. Seema Rebendra Datta (nee Mrs. Seema S. Parab), Ms. Rebecca Rebendra Datta (nee Mrs. Rebecca G. Dey), Ms. Diana Rebendra Datta (nee Mrs. Diana G. Virwani). The daughters are the caveatrixes/ defendants in the testamentary suit. The husband of the said deceased died on 28th October, 2006. The parents of the said deceased predeceased the deceased.

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2. It is the case of the plaintiff that under the said alleged Will dated 16th October, 1996, the said deceased had appointed the plaintiff as an executor. The said Will was allegedly witnessed by Dr. Vimal Kasbekar and Mrs. Philomena Rodrigues. Under the said Will, the said deceased had disinherited her daughter Ms. Diana Rebendra Datta and other two daughters. It was stated in the said alleged Will that the flat no. 16 was bequeathed to Mr. Rajiv R. Datta.

3. Under the said Will, it was provided that one flat was already given to Ms. Seema R. Datta at Malad. Another flat was given to Ms. Rebecca R. Datta at Andheri. Flat no.13 was in the joint name

of Mr. Rebendra Narayan Datta and the said deceased which was allegedly bequeathed in favour of the son Mr. Rajiv R. Datta. Under the said alleged Will, a piece of land admeasuring about six acres at Pen Town, District Raigad with factory shed and residential quarters was bequeathed in favour of the son Mr. Rajiv R.Datta. Gala no.87 situated at Gandhi Nagar, Worli Industrial Estate at Worli, Mumbai - 400 018 which was a tenanted property, the tenancy thereof was bequeathed in favour of son Mr.Rajiv R.Datta.

4. A duplex flat bearing no.A-2 at Rajgol Park, Lonavala, Taluka Mawal, District Poona and a flat in Goa, Navalkar Estates, and a flat at Pune in building Maya Classic, Lulla Nagar, Pune - 411 040 were to jointly devolve upon Ms.Seema R.Datta, Ms.Rebecca R.Datta and Mr.Rajiv R.Datta.

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5. It is the case of the plaintiff that the said Will was registered in the office of the Sub-Registrar of Assurances bearing no.4184 on 21st November, 1996. On 9th December, 1996, the said deceased expired. On 20th September, 2006, the father of Mr. Rajiv Datta and the caveatrixes executed a Memorandum of Understanding. It is the case of the plaintiff that on 21st October, 2006, the said Mr.Rebendra Narayan Datta, father of these parties duly executed a Will at Mumbai which was witnessed by Mr.T.S.Tendolkar, father of the plaintiff and Ms.Ruchika P.Tendolkar, wife of the plaintiff. On 28th October, 2006, the said Mr.Rebendra Narayan Datta passed away at Mumbai. On 16 th July, 2008, the plaintiff filed Testamentary Petition No.696 of 2008 inter alia praying for grant of probate in respect of the alleged Will dated 16th October,1996 executed by the said deceased in this court.

6. The Plaintiff also filed Testamentary Petition No.695 of 2008 inter alia praying for grant of probate in respect of the alleged Will dated 21st October,2006 left by Mr.Rebendra Narayan Datta in this court. The three daughters of the said deceased filed caveats and also affidavit in support of the caveat raising various contentions regarding the alleged Will left by the said deceased. In view of the daughters having filed caveats and affidavit in support of the caveat, the said Testamentary Petition no.696 of 2008 was converted into a suit bearing no. 65 of 2009.

7. On 19th March,2015, this court framed following issues and kvm TS65.09 -corrected issued various directions to the parties to file affidavit of evidence, affidavit of documents, a compilation of documents etc. The conclusion drawn by this court on those issues are in the later part of this judgment :-

ISSUES

1. Does the plaintiff prove that the No document dated 16th October, 1996 was duly and validly executed in accordance with law by Catherine Rebendra Datta as her last Will and Testament ?
2. Whether the plaintiff proves that at the No time of alleged Will, the deceased was of sound and disposing state of mind, memory and understanding ?

3. Whether the defendants prove that the Yes alleged Will is fraudulent?
4. Whether the defendants prove that the Yes alleged Will is forged ?
5. Whether the defendants prove that the Does not arise alleged Will was procured by undue influence or coercion ?
6. What relief and what order ? Suit is dismissed with costs.

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8. The plaintiff examined the alleged attesting witness Dr. Vimal G.Kasbekar (PW-1) who filed her affidavit in lieu of examination-in-chief affirmed on 6th May, 2015. The plaintiff who claimed to be an executor also entered into the witness box (PW-2) and filed his affidavit in lieu of examination in chief dated 8 th June, 2015. The plaintiff also examined Mr.Ketan Shinkar, Junior Clerk in the office of the Joint District Registrar (PW-3) whose examination in chief was recorded in court. The defendants examined defendant no.2 Mrs. Diana Virwani as a witness (DW-1) and Mr. Trimbkeshwar S.Tendolkar, the father of the plaintiff (DW-2) whose examination in chief was recorded in court on 13th July, 2017. All these witnesses examined by the respective parties were cross examined by the other side.

9. Ms. Diana Rebendra Datta (nee Mrs. Diana G.Virwani), the defendant no.2 who appeared for herself and her two sisters in person filed written arguments and also made oral submissions before this court. The defendant no.2 invited my attention to various submissions made in the written arguments. It is submitted that though the alleged Will of the said deceased had been registered, the alleged Will annexed to the testamentary petition is not as per her last Will and Testament. The said Will was alleged to have been registered at the residence of the said deceased with the advocate Mr.T. S. Tendolkar as a registered witness who is the father of the advocate Mr. Prasad T. Tendolkar claiming to be the executor in the alleged Will of the mother of the defendants.

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10. It is submitted that admittedly the mother of the defendants and Mr.Rajiv R.Datta died on 9th December,1996. The said alleged document was suppressed by the plaintiff. The defendants were informed about the said alleged Will by the counsel of this court more than 10 years after the death of the said deceased by letter dated 27th April, 2007. The defendants were not even shown such Will either by the plaintiff or by his advocate though the defendants had called upon the plaintiff and the learned advocate to forward a copy of the alleged Will if any, to the defendants. It is the case of the defendants that they could see the alleged Will for the first time only in the month of September 2008 along with a copy of the petition for probate.

11. It is submitted that the plaintiff has violated section 281 of the Indian Succession Act, 1925 and also Rule 374-C and 384 of the Bombay High Court (Original Side) Rules in view of the plaintiff not having annexed the affidavit of the attesting witness alongwith the testamentary petition filed on

16th July, 2008. The affidavit of the alleged attesting witness was filed on 6th May, 2015 after more than seven years of filing the petition and that also when the testamentary petition had come up on board of this court.

12. It is submitted that the so called explanation given by the plaintiff for delay of 12 years in filing the testamentary petition is also not at all satisfactory. She submits that the explanation for not filing the testamentary petition for a period of 12 years that the plaintiff kvm TS65.09 -corrected could not arrange for payment of probate fees cannot be accepted by this court. She submits that the plaintiff did not bother to ask Mr.Rajiv R.Datta who possessed the said alleged Will for last more than 10 years nor called upon the said Mr.Rajiv R.Datta to handover the original alleged Will to enable him to file testamentary petition for grant of probate. She invited my attention to some of the portion of the affidavit in lieu of examination in chief of the alleged attesting witness and also the cross examination of the said witness by the defendant no.2 on behalf of all the defendants. She submits that there are large number of major discrepancies in the registration records which would show that the Will propounded by the plaintiff was not the last Will and Testament of the said deceased.

13. It is submitted by the defendant no.2 that the Will executed by the said deceased was duly registered with the Registrar of Assurances and was different Will thereby appointing two daughters viz. Ms.Seema Rebendra Datta and Ms.Rebecca Rebendra Datta and the son Mr.Rajiv R.Datta as executors. The said Will left by the said deceased was listed in Index-3 maintained at the Office of the Registrar of Sub-Assurances. In the said Index-3, the name of the executors notified in the original Will were documented. She placed reliance on sections 51(1)(A), 52(2), 55(4), 56 and section 69G of the Indian Registration Act, 1908 and pages 23 to 25 and page 29 of the Maharashtra Registration Manual Part - I and would submit that the documents in the office of the Registrar and Sub-Registrar are always bound into a separate volume year after year. She also placed reliance on Rule no.35 of Maharashtra Registration Rules, 1961 and page kvm TS65.09 -corrected no.61 of Maharashtra Registration Manual Part - I.

14. Defendant No.2 strongly placed reliance on the certified copy of the Index - 3 dated 2nd December, 1996 and would submit that the said index would clearly show that the names of Ms.Seema Rebendra Datta and Ms. Rebecca Rebendra Datta and Mr.Rajiv Rebendra Datta was officially recorded in the said Index-3 as executors of the Will executed by the said deceased with registration no.BBE-4184-1996. She submits that contrary to the Will which was duly registered and notified in Index-3 which was left by the said deceased, the Will propounded by the plaintiff shows the name of the plaintiff as its executor. She invited my attention to the cross examination of the plaintiff (PW-2) stating that he was not aware about Index-3 documents produced in the office of the Registrar of Sub-Assurances. Reliance was placed on the answers of the said witness on question nos. 28 and 29 in his cross examination. She also strongly placed reliance on the cross examination of the PW-3 i.e. the Joint District Registrar who deposed that the documents when recorded in Index-3 are always authenticated by the Joint District Registrar at their office. She relied upon the answers of the said witness to question nos. 5 and 6 of the evidence recorded on 13th April, 2017.

15. It is submitted that the Day Book record maintained by the office of the Sub-Registrar of Assurances would clearly show that the father of the plaintiff, advocate Mr.T.S.Tendolkar had mis-represented kvm TS65.09 -corrected himself to the registering authority and illegally collected the alleged original Will document from the Registrar's Office without any authority. The plaintiff or the witness examined by the plaintiff from the office of the Registrar of Sub-Assurances could not produce any acknowledgment of the father of the plaintiff while allegedly collecting the alleged original Will from the office of the Sub- Registrar of Assurances under sections 13, 40, 52 and 61(1) of the Maharashtra Registration Rules, 1961. She submits that the said signature of the party collecting such document has to be obtained on the Day Book in form (G). She strongly placed reliance on pages 56, 62, 63, 67 and 70 of the Maharashtra Registration Manual Part - I.

16. The defendant no.2 relied upon the examination in chief of the DW-2, the father of the plaintiff and more particularly question nos.1, 11, 12 and 15 and would submit that the said witness had allegedly collected the alleged Will from the Registrar's Office on 20 th January,1997 i.e. after 42 days of the demise of the said deceased and admitted that he had picked up the said alleged Will from the office of the Sub-Registrar of Assurances without any authority. She submits that the said Mr. T.S.Tendolkar, falsely identified himself as an executor under the alleged Will which was clearly notified in the 4 th column of Day Book document i.e. Ex.P-7, page 189. She submits that the said Mr.T.S.Tendolkar in his evidence deposed that after collecting the alleged Will document from the Registrar's Office, he had handed over the said document to someone whose name he did not remember.

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17. It is submitted that the collection of the original document from the Registrar's Office without any authority amounts to serious act of theft on the part of the said Mr.T.S.Tendolkar, advocate. She submits that the said witness had deposed that he was a frequent visitor to the office of the Sub-Registrar of Assurances. Due to registration of various documents carried out by him, the said Mr.T.S.Tendolkar had changed and replaced the Will document by taking advantage of the liberty enjoyed by him at the Office of the Registrar of Sub-Assurances. She submits that neither the Day Book document nor any other record of the Office of the Registrar of Assurances had mentioned about the death certificate of the said deceased having shown to the concerned authority or submitted by the father of the petitioner or anybody else while collecting the alleged original Will from the Office of the Registrar of Assurances.

18. The defendant no.2 relied upon the answer to the question no.10 in cross examination of Mr.Anil Deo (PW-3), the Joint District Registrar admitting that after the testator's death, only a beneficiary could pick up an original Will document from the office of the Registrar of Sub-Assurances. She submits that even under the said alleged Will propounded by the plaintiff, Mr.T.S.Tendolkar, advocate was neither any beneficiary nor had authority to collect the said alleged Will from the office of the Registrar of Sub-Assurances. She relied upon the reply of the said witness in the cross examination of the said witness to question nos. 14 and 15 who deposed that he had kvm TS65.09 -corrected not picked up the Will document even in the capacity of the witness to the registration of the said alleged Will. It is submitted that it was the case of the plaintiff that the said

Mr.T.S.Tendolkar, advocate even did not bother to inform him for more than 10 years that he was a alleged witness to the Will of the said deceased before the Registrar of Assurances at the residence of the said deceased.

19. The defendant no.2 invited my attention to the cross examination of the plaintiff and in particular reply to question nos. 31 and 32 who deposed that he never knew about the Day Book document in the office of the Registrar and also did not know that his father had picked up the Will from the office of the Sub Registrar of Assurances. It is submitted that the said Mr.T.S.Tendolkar, advocate being the alleged witness of the registration of the Will carried out on 21st November, 1996 taken place at the residence of the said deceased was the only person on record who was aware of the said alleged Will having been registered.

20. It is submitted that the father of the plaintiff had used his influence and contacts in the office of the Registrar and removed and destroyed the registered Will left by the said deceased appointing Ms.Seema S. Parab, Ms.Rebecca G.Dey and Mr.Rajiv R.Datta as executors and subsequently replaced the said original Will in the office of the Registrar with the new fraudulent, manipulated, alleged Will appointing his own son as the executor under the said registration BBE number.

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21. It is submitted that the copy of the replaced alleged Will at the Office of the Registrar of Sub-Assurances is seen without any seals of the Registrar or Sub-Registrar on the first five pages. None of the pages have the identification stamp which denote page number and Will numbers. She submits that the Will thus propounded by the plaintiff was not a part of the registered document with registration no.BBE-4184-1996. It is submitted that the said Mr.T.S.Tendolkar admitted in his evidence that he had not read the said Will nor he knew who had drafted the said Will. She submits that the said deceased was the regular client of Mr.T.S.Tendolkar, advocate for income tax matters till her death. She submits that the deposition of the said Mr.T.S.Tendolkar that he did not even bother and was least interested to read the Will document of the said document after her death. He was not even aware of the contents and thus did not vouch for the alleged Will in the department of the Prothonotary and Senior Master of this court which clearly shows that the Will propounded by the plaintiff is surrounded by the suspicious circumstances.

22. The defendant no.2 submits that several discrepancies in the record of the Registration Department insofar as the Will propounded by the plaintiff would clearly show that the Will propounded by the plaintiff was a fraudulent Will and was not a part of the original Will executed by the said deceased which was duly registered vied registration no. BBE-4184-96. She also strongly placed reliance on the cross examination of Mr.Anil Deo (PW-3), the Joint District Registrar stating that as per sections 35 and 41 of the Registration Act, kvm TS65.09 -corrected 1908, the Will documents are always registered as any other document by the office of the Registrar of Sub-Assurances.

23. The defendant no.2 placed reliance on pages 174 to 179 of Volume D i.e. copy of the alleged Will propounded by the plaintiff and would submit that the square shaped identification stamp on all

pages of the said document was absent. The square shaped identification stamp denotes registration number, office name, page number, total number of pages and the registration office address recorded on every page. The last two pages of the registration in the alleged Will did not have identification stamp. She placed reliance on pages 191 to 196 of Volume D in support of this submission.

24. It is submitted by the defendant no.2 that there are two Avatars of the alleged Will of the said deceased. The first Avatar contains first five pages of the six page Will document, a copy whereof was filed at the registered office which did not have Sub- Registrar's seal. She submits that the second Avatar is contrary to the first Avatar in which the seals of the Sub-Registrar were seen on the same pages of the alleged Will document filed by the plaintiff in this court. In support of this submission, she placed reliance on pages 174 to 178 of Volume D.

25. The defendant no.2 placed reliance on the cross examination of the PW-3 and more particularly the answers to question nos. 3 and 4 and would submit that the configuration of the locations of seals and kvm TS65.09 -corrected signatures of the Sub-Registrar and handwriting on the 6 th page of the Will copy at the registration office were entirely different and did not match with the 6th page of the alleged Will annexed to the testamentary petition filed by the plaintiff. This court can see and compare those pages with naked eye and can draw conclusion that the Will propounded by the plaintiff is different than the Will of the said deceased which is registered with the office of the Registrar of Sub- Assurances.

26. The defendant no.2 placed reliance on pages 179 and 196 of Volume D and would submit that the handwriting of the Sub-Registrar on registration No. BBE-4184-1996, Book no.3 dated 2-12-96 are entirely different on sixth pages of the alleged Will and the copy in the registered Will. She submits that none of the six pages in the Will filed in the office of the Registrar are photocopies of the alleged Will filed in this court. The plaintiff has violated section 70(D)(1)(B) of the Maharashtra Registration Manual Part - I. The plaintiff has violated section 35 and section 41 of the Registration Act, 1908. She submits that the seals of the Sub-Registrar on the alleged Will filed in this court by the plaintiff are affixed externally which provides that the fake seals were made and deceitfully used to make a fraudulent alleged Will to look original.

27. The defendant no.2 placed reliance on pages 178 and 179 of the Volume D i.e. pages 5 and 6 of Ex.P-1/2 and would submit that the last two pages of the alleged Will filed in this court have all kvm TS65.09 -corrected stamps, seals and signatures in black color suggesting that the last two pages of registration are photocopies and not the originals. She submits that the plaintiff also admitted in his evidence that the last two pages were entirely in black ink.

28. The defendant no.2 invited my attention to page no.178 of Volume D i.e. page 5 of the alleged Will propounded by the plaintiff and would submit that the said page would clearly indicate that the photocopy fee of Rs.40/- had been collected for photocopy of the said alleged Will containing six pages. She submits that as per rate card of the Registrar's Office, photocopy charges were at the rate of Rs.5/- per page in the year 1996. She submits that it is thus clear that the original Will which was duly registered was of 8 pages whereas the alleged Will relied upon by the plaintiff is only of 6 pages.

She submits that it is thus proved beyond reasonable doubt the original Will containing 8 pages had been destroyed and is substituted by the alleged Will containing 6 pages.

29. The defendant no.2 invited my attention to Memorandum of Understanding annexed at pages 80 to 82 and would submit that the said Memorandum of Understanding was drafted by Mr.Rajiv R.Datta and was signed by all the legal heirs of the said deceased and the father of the parties almost 10 years after the death of the said deceased mother confirming on the first page that 13, Mistry Park, Bhulabhai Desai Road, Mumbai property was entirely in the name of the father Mr.Rebendra N.Datta. She submits that in the alleged Will kvm TS65.09 -corrected propounded by the plaintiff, it is allegedly stated that in respect of 50% of her share in the said Mistry Park property, she had nominated Mr.Rajiv R.Datta contrary to the factual position.

30. It is submitted that Mr.Rajiv R.Datta was already in possession of the alleged Will document propounded by the plaintiff since April 1997 after he got the alleged attesting Will from Mr.T.S.Tendolkar, advocate. She submits that though Mr.Rajiv R.Datta used this attested copy for fraudulently transferring the Pen property in his own name, he did not apply for the transfer of 50% share of 13, Mistry Park to his own name because his father and his three sisters residing in Mumbai were never aware of this alleged Will document. She submits that if any such Will as propounded by the plaintiff was executed by the said deceased, the father of the parties who was husband of the said deceased would be definitely aware of such Will which was not even referred in the said MOU.

31. It is submitted that the said Mr.Rajiv R. Datta had thus concealed the alleged Will document from his father and three sisters in April 2007. She submits that even the said MOU also stated that it was the wish of the mother of the parties that the defendant no.2 should get the property i.e. 105, New Pavan Vihar, Bandra, Mumbai. She submits that as against that, the alleged Will propounded by the plaintiff shows that the defendant no.2 was dis-inherited by the deceased mother in the said alleged Will. It is submitted that if the plaintiff wanted to propound any Will and was in possession of the kvm TS65.09 -corrected actual Will on the date of the execution of the MOU, he would not have drafted the MOU stating adverse details in respect of various properties.

32. It is submitted by the defendant no.2 that the deposition of the plaintiff in Testamentary Suit No. 58 of 2009 and in particular paragraph (5) that the deceased father of the parties had expressed his desire to provide in his Will the plaintiff as the executor as he was already named as the executor in the Will dated 16th October, 1996 of the mother of the parties, he requested him to stand as an executor on his proposed Will is totally false. She submits that as an alleged executor, the plaintiff could have asked the father of the parties for copy of the Will of the mother to enable him to initiate the probate proceedings at once in September 2006.

33. It is submitted by the defendant no.2 that though the plaintiff who claimed to have seen the alleged Will for the first time in April 2007 allegedly received from Mr.Rajiv R.Datta did not bother to bring the alleged Will to the notice of the defendants and decided to handover the alleged Will to the counsel of this court for making an application for grant of probate. She submits that in reply to question no.11 of the cross examination of the plaintiff held on 31 st January,2017, the plaintiff deposed that all the legal heirs of the said deceased were informed about the Will of the said

deceased in the month of April 2007 however in the cross examination conducted on 22nd November, 2017, in reply to question no.1 in Testamentary Suit kvm TS65.09 -corrected No.58 of 2009, he deposed that he did not inform the daughters about the alleged Will.

34. In reply to question nos. 21 to 24 in Testamentary Suit No.58 of 2009, the plaintiff deposed that he also did not remember who had seen the Will document till 30th April, 2007. She submits that the defendants were informed only by the counsel of this court for the first time when the letter dated 27th April, 2007 was received from the learned counsel informing them for the first time about the existence of the alleged Will left by the mother of the parties.

35. It is submitted by the defendant no.2 that the deceased father who expired on 28th October, 2006 had filed nomination forms in respect of the two properties i.e. (1) 13, Mistry Park Apartment, 77, Bhulabhai Desai Road, Mumbai and (2) 105, New Pavan Vihar, Bandra West, Mumbai on 28th May, 2005 nominating all four children in respect of those two properties. The defendant no.2 relied upon the examination in chief of Mr.T.S.Tendolkar, Advocate and more particularly reply to question nos. 6 to 10 recorded on 14th July, 2017 admitting that he had attested the Will copy for Mr.Rajiv R.Datta in 1997 without reading or comparing it with the original. She submits that four months after illegally procuring the office of the Sub- Registrar, Advocate Mr.T.S.Tendolkar attested the copy of the alleged Will for Mr.Rajiv R.Datta on 9th April, 1997 and admitted that he had attested the Will copy without reading the copy and without even comparing with the Will copy with the original Will document. She kvm TS65.09 -corrected submits that Mr.Rajiv R.Datta used the said alleged Will for transferring the six acre Pen property to his name on 21st October,1999 behind the back of other legal heirs illegally.

36. The defendant no.2 submits that the defendant no.1 had lodged FIR bearing no.104 of 2013 at Pen Police Station against Mr.Rajiv R.Datta and Ex-Talathi of Pen Mr.Shrikant More. The charge-sheet came to be filed against Mr.Rajiv R.Datta and Ex-Talathi of Pen Mr.Shrikant More on 23rd December,2015 at Pen Court bearing Charge-Sheet No.600125/ 2015.

37. The defendant no.2 placed reliance on the cross examination of the plaintiff to question nos. 31 and 32 and would submit that the plaintiff had falsely alleged that he had never seen the alleged Will of the said deceased for more than 10 years 4 months i.e. from 1996 to April 2007 although the father of the plaintiff had collected the alleged Will from the Office of the Registrar of Sub-Assurances in the month of January 1997 itself and had attested a copy for Mr.Rajiv R.Datta in 1997. It is submitted that the plaintiff admittedly resided with his father at the same address till 2009 however falsely stated that he was not aware about the alleged Will of the said deceased till 2007 which clearly indicates the suspicious circumstances insofar as the alleged execution of the Will propounded by the plaintiff is concerned.

38. It is submitted that the alleged Will could not have been surfaced after 10 years and 4 months after demise of the mother and 6 kvm TS65.09 -corrected months after demise of the father at the hands of Mr.Rajiv R.Datta. It was the case of the plaintiff that the said Mr.Rajiv R.Datta had handed over the alleged Will to the plaintiff only in the month of April 2007 after more than 10 years after execution of the alleged Will. The defendant no.2 placed reliance on the cross examination of the

plaintiff and more particularly his reply to the question nos. 14 to 16 recorded on 31st January, 2017 and would submit that the plaintiff who claimed to be the executor himself was an Advocate neither bothered to ask Mr.Rajiv R.Datta who was in possession of the alleged Will document for more than 10 years and also did not bother to enquire the reasons for such an extensive delay for handing over the alleged Will document by Mr.Rajiv R.Datta to the plaintiff for filing probate petition. She submits that the reasons alleged in the probate petition that the petition could not be filed for long period because of the delay in arranging the probate fees is totally false and frivolous.

39. It is submitted by the defendant no.2 that the evidence on record would clearly indicate that Mr.Rajiv R.Datta was alleged to be in possession of the alleged Will during the period between 1997 to 2007. He alleged to have contacted Mr.T.S.Tendolkar on 29th April, 1997 to get the copy of the alleged Will attested by the said advocate. He had made an application to the Pen Talati to get the Pen property transferred in his name in October 1999 and when he had allegedly handed over the alleged Will in the first week of April 2007 to the plaintiff as alleged by the plaintiff in his evidence. She submits that the fact that the said Mr.Rajiv R.Datta never disclosed about the kvm TS65.09 -corrected alleged Will to the father or to the defendants for more than 10 years and 4 months shows clear case of suspicious circumstances.

40. The defendant no.2 submitted that the defendants saw the alleged Will document for the first time when a copy of the probate petition was served upon them in the month of September 2008. She relied upon some of the correspondence exchanged between the plaintiff and a counsel of this Court. She also placed reliance on answers to question nos.24 and 25 of the plaintiff at the stage of cross-examination in Testamentary Suit No.58 of 2009 and would submit that the plaintiff had deposed in his cross-examination that he was not even sure if counsel of this Court was ever given the Will document for probate formalities.

41. The defendant no.2 placed reliance on answers of the plaintiff to question nos.33 to 36 and 42 to 46 and also page 2 of the affidavit of document and would submit that the plaintiff had admitted in his affidavit of document that he was in possession of all property documents listed in Schedule-1 of his petition for probate. However in his cross-examination, he deposed that he did not have any property document in his possession and did not know even if they existed or not. She submits that learned counsel Shri Damle was served with a witness summons to appear before this Court. The defendants however did not pursue the said witness summons and did not examine the learned Counsel.

kvm TS65.09 -corrected

42. The defendant no.2 laid emphasis upon the cross- examination of Dr.Vimal Kasbekar (PW-2) and would submit that the said alleged attesting witness has falsely deposed that she strangely vouched for the entire six page Will document and further deposed that the said deceased was in good health. She submits that though the said witness deposed that she had never read the Will document, she however contrary to the said statement deposed that she had vouched for the entire six-page Will document.

43. The defendant no.2 submits that the said deceased was bedridden, had high BP, severe diabetes since 1985, was unable to walk and was suffering from spinal problem and had severe vision problems. There was cataract operation of both her eyes five months prior to her demise. Contrary to all these evidence, the said attesting witness falsely deposed that the said deceased was in good health. In support of her submission, the defendant no.2 relied upon the answers in cross-examination of the said PW-2 to question nos.7 to 16. She relied upon deposition of Mr.T.S. Tendolkar (DW-2) who admitted that the said deceased was bedridden. The said DW-2 even did not remember the time and day of the execution of the alleged Will which would clearly indicate that the alleged Will was frivolous and suspicious. There was no record produced by the plaintiff to show that who had scribed the said alleged Will of the deceased and that also is a ground of suspicious circumstances in execution of the said alleged Will.

kvm TS65.09 -corrected

44. The defendant no.2 placed reliance on page 4 of the alleged Will and Page 177 of Volume-D and would submit that the name of plaintiff was allegedly shown on 4th page of the alleged Will that itself creates a suspicion. The officials examined from the office of Registrar of Sub-Assurances confirmed that the original registered Will of the said deceased was documented with Registration No.BBE- 4184-96 had names of Seema Datta, Rebecca Datta and Rajiv Datta as executors. However in the alleged Will propounded by the plaintiff and filed in the office of Prothonotary and Senior Master of this Court, name of plaintiff was shown as executor and that also on 4 th page of the said alleged Will. She submits that the alleged Will propounded by the plaintiff is surrounded by suspicious circumstances and not a genuine Will of the said deceased.

45. The defendant no.2 placed reliance on pages 102 to 105 of Volume-A and would submit that the defendant no.1 had filed an FIR against Mr.Rajiv Datta with Pen Police Station in July 2013 and another FIR was filed by the defendant no.3 against Mr.Rajiv Datta in June 2008 relating to fraudulent transfer of shares of Hindustan Lever Co. Ltd. standing in the name of deceased and thereafter sale of those shares by the said Mr.Rajiv Datta after three years of the death of the said deceased. She submits that those shares were valuable shares and were illegally sold by Mr.Rajiv Datta and were not reflected in the schedule of the assets of the said deceased in the testamentary suit. She submits that the share transfer documents were witnessed by Mr.Rajiv Datta and notarised by Mr.T.S.Tendolkar, kvm TS65.09 -corrected advocate. Mr.Rajiv Datta was arrested on 9 th July 2008 and released on bail on the next day. She submits that charge sheet are already filed against Mr.Rajiv Data in case of fraudulent Pen property transfer and also transfer of shares in the name of deceased held in Hindustan Lever Co. Ltd.

46. It is submitted that the defendants had called upon the plaintiff to show the alleged Will of the said deceased before application for probate was filed by the plaintiff. No such alleged Will was produced by the plaintiff. She submits that the entire evidence of the plaintiff himself and other witness examined by the plaintiff is totally false. The plaintiff has failed to prove the execution and attestation of the alleged Will of the said deceased and also failed to discharge the burden cast on them.

47. Mr.Kanade, learned counsel for the plaintiff, on the other hand, relied upon a letter dated 27th April 2007 addressed by Shri A.G. Damle, now a Senior Advocate to the defendants which notice was addressed on behalf of the plaintiff herein and would submit that in the said letter, the defendants were informed that their deceased mother had left a Will dated 16 th October 1996 under which some of the defendants were the beneficiaries. In the said letter, there was also a reference to the alleged Will left by father of the defendants and Mr. Rajiv Datta. It was further alleged that the plaintiff in testamentary suit was appointed as an executor in both the alleged Wills. In the said letter, it was further mentioned that since the plaintiff had approached kvm TS65.09 -corrected him for filing probate petitions of both the Wills, the defendants and Mr.Rajiv Datta being beneficiaries under Wills to deposit a sum of Rs.3,00,000/- including probate fees, professional fees and other incidental expenses with the plaintiff to enable him to take necessary steps for filing probate petitions in this Court. He also invited my attention to the letter dated 31 st July 2007 from the advocate of the defendant no.1 to the plaintiff placing on record that the plaintiff had not complied with the said notice issued by her through her advocate.

48. Learned counsel for the plaintiff invited my attention to the issues framed by this Court and would submit that in so far as the issue nos.3 to 5 are concerned, burden of proof was on the defendants and not the plaintiff. The plaintiff was required only to prove that the Will of the said deceased propounded by the plaintiff was validly executed, the said deceased was of proper and sound mind and to dispel the alleged suspicious circumstances sought to be alleged by the defendants in execution of the said Will propounded by the plaintiff. He submits that no case is made out by the defendants to prove any alleged undue influence or coercion on the part of the plaintiff or Mr.Rajiv Datta in execution of the said alleged Will of the said deceased. Signature of the said deceased on the Will in question is not disputed by the defendants in the affidavit in support of the caveat filed by them. In support of this submission, learned counsel invited my attention to some of the averments made in the affidavit in support of the caveat.

49. It is submitted by the learned counsel that it is the case of the kvm TS65.09 -corrected defendants in the affidavit in support of the caveat that there is contradictions in the alleged Will and Memorandum of Understanding and there was no alleged explanation of more than 12 years for filing probate petition by plaintiff. Learned counsel for the plaintiff placed reliance on cross-examination of the PW-1 to question nos.1, 11, 14, 16 and 19. He submits that in the cross-examination of PW-1, her testimony was un-shattered. He submits that the said witness, being a Doctor, in her cross-examination had clearly affirmed that the said witness had signed the said Will as an attesting witness. He placed reliance on pages 129 to 132 of Volume- C. He submits that execution of the said Will was already proved by the plaintiff and by an order dated 19th January 2017, the said Will was already marked as Exhibit P-1/2 by this Court.

50. It is submitted by the learned counsel for the plaintiff that the plaintiff had examined himself as a witness. He invited my attention to the affidavit in lieu of examination-in-chief annexed at pages 112 to 115 of Volume-C and cross-examination by the defendant no.2 at pages 117 to 124 of Volume-C. Learned counsel for the plaintiff also invited my attention to question nos.1 to 3 at page 117 of the cross-examination of the said witness by the defendant no.2. He submits that the said witness also has withstood the cross- examination conducted by the defendant no.2.

51. In so far as the document being Index 3 and Day Book Register sought to be relied upon by the defendants is concerned, it is kvm TS65.09 -corrected submitted that by question nos.29 and 32, the said two documents were marked as Y-1 and Y-2. During the course of the cross- examination of the PW-2, the said witness affirmed that the Will was prepared in 1996, it came in his possession in April 2007 and that the testamentary petitions were filed in July 2008. In support of this submission, he placed reliance on answers of the said witness to question nos.8, 42 and 48.

52. Learned counsel for the plaintiff submits that the plaintiff had also examined Mr.Ketan Shinkar, Junior Clerk in the office of the Joint District Registrar as PW-3. The said witness had brought various documents from the office of Sub Registrar which documents were marked as Exhibits P-6 to P-9 respectively. The said witness was cross-examined by the defendants and more particularly on the issue regarding procedure required to be followed by the Registrar's office for maintaining documents. He relied upon answer to question no.137 and would submit that the said witness was asked questions about putting of rectangular stamp on the registered document. The said witness in response to the question no.4 deposed that the black rubber stamp was the final registration stamp. He submits that the said witness had proved beyond reasonable doubt that the said Will (Exhibit P-1/2) was duly lodged for registration. He submits that the said document which was produced by PW-3 was a copy of the Will i.e. of Exhibit P-1/2.

53. Learned counsel for the plaintiff submits that the defendants kvm TS65.09 -corrected had also examined the Joint District Registrar who denied the suggestion of the defendant no.2 and replied to question no.1 that Exhibit-9 i.e. copy of the Will registered with Sub-Registrar bearing No.4184 did not have round seal which was on the original Will. In reply to question nos.3 and 4, the said witness refused the suggestion put to him by the defendant no.2 that there was difference in the original Will and the certified copy given by the office of the District Registrar. He submits that the deposition of the defendant no.2 herself negates the case of the defendants and therefore no credence can be given to the contention of the defendant no.2 that there was any irregularity in the manner of registration of the said Will at Exhibit P-1/2.

54. Learned counsel for the plaintiff submits that the defendant no.2 was examined by the defendants by filing of affidavit of evidence and was thoroughly cross-examined by the plaintiff's counsel. Learned counsel placed reliance on answers given by DW-2 to question nos.6 to 10 and would submit that the contention of the defendants that they were unaware of the Will till April 2007 is clearly falsified. He submits that Memorandum of Understanding relied upon by the defendants clearly reflects that the reference to the said Will was in the said Memorandum of Understanding. The said Memorandum of Understanding was admittedly signed by all the legal heirs of the said deceased and Mr.Rebendra, father of the defendants and Mr.Rajiv Datta. The defendant was thus aware of propounding the Will by the plaintiff.

kvm TS65.09 -corrected

55. It is submitted that the properties which were bequeathed in the said Will left by the said deceased in favour of Mr.Rajiv Datta were not mentioned in the said Memorandum of Understanding. In support of this submission, learned counsel placed reliance on the reply of the

defendant no.2 in her cross-examination to question nos.11 to 14. In so far as the submission of the defendants that there are suspicious circumstances in execution of the alleged Will is concerned, it is submitted by the learned counsel for the plaintiff that in the Will propounded by the plaintiff, the name of the caveatrixes are not shown as executors. In support of this submission, he placed reliance on answers to question nos.18 and 19 of DW-1. DW-1 has submitted that Exhibit P-6 was prepared by clerk. He submits that the noting of an official of the office of the Sub-Registrar did not denude the validity of the Will which was otherwise proved by the plaintiff.

56. Learned counsel for the plaintiff relied upon the answer of DW-2 to question no.27 and would submit that the said witness had admitted that the defendants had obtained a copy of the Will from the competent authority at Pen, District Raigad. Learned counsel for the plaintiff submits that the defendants had examined Mr.Trambakeshwar Tendolkar, Advocate who was father of the plaintiff as their witness. Learned counsel placed reliance on the examination-in-chief of the said witness and more particularly recorded the answers to question nos.6, 11 and 12. The said witness had answered that he had not described himself as an executor to the office of the Sub-Registrar while collecting the Will from the said kvm TS65.09 -corrected office. In his cross-examination, the said witness admitted that he was never appointed as executor by the said witness and he was a witness to registration of Exhibit P-1/2 on 21st November 1996. It is submitted by the learned counsel that there is no question of any suspicious circumstances in execution of the Will propounded by the plaintiff as canvassed by the defendants.

57. It is submitted by the learned counsel for the plaintiff that insofar as issue nos.3, 4 and 5 framed by this Court are concerned, the burden was on the defendants to prove those issues. The plaintiff was only required to prove the valid execution and attestation of the Will and as to whether the said deceased was in proper state of mind at the time of execution of the Will and Codicil and to dispel the suspicious circumstances, if any, in execution of those documents. It was for the defendants to plead and prove that the said deceased had other properties which were not disclosed in the testamentary petition filed by the executor. He submits that the defendants have failed to prove the allegations of undue influence or coercion on the part of the plaintiff or the son of the said deceased though an oral evidence was led by the defendants. The signature of the deceased testator has not been denied by the defendants in the affidavit in support of the caveat.

58. Insofar as the submission of the defendants in respect of kvm TS65.09 -corrected the delay of 12 years in filing the testamentary petition by the petitioner is concerned, it is submitted that the petitioner has explained the delay in the testamentary petition itself.

59. Learned counsel for the plaintiff invited my attention to the answer of PW 1 to the question numbers 1, 11, 14, 16 and 19. He submits that the defendants have admitted the attestation of the Will and also the signature of the testator and the attesting witnesses. He relied upon the answer of PW 2 recorded in paragraph 3 of the cross-examination. It is submitted that the witnesses examined by the plaintiff has withstood the deposition of witnesses in the examination in chief during the course of the cross-examination.

60. It is submitted by the learned counsel that even in the Memorandum of Understanding executed between the parties a reference of Will left by the mother of the defendants and their brother was made. All the defendants were fully aware of the execution of the Will of the mother at least on 20 th September, 2006 when the Memorandum of Understanding was executed between the son and all the daughters of the deceased and also the father of the parties. He submits that none of the properties mentioned in the Memorandum of Understanding were part of the Will of the mother.

kvm TS65.09 -corrected

61. Learned counsel for the plaintiff invited my attention to the cross-examination of the defendant no.2 and in particular reply to question nos.5 to 15. He submits that the defendant no.2 in her cross-examination has referred to an alleged oral Will of the said deceased mother. He submits that since the questions were asked to the said witness by the plaintiff, the Memorandum of Understanding will have to be marked as Exhibit P-10. The said Memorandum of Understanding is accordingly marked as Exhibit P-10.

62. It is submitted by the learned counsel that there was no reference to any alleged oral Will in the affidavit in support of the caveat filed by the defendants. The properties which were bequeathed to the son by the mother had not been mentioned in the Memorandum of Understanding. He submits that since the Will of the mother was already acted upon by Mr. Rajiv Datta by transferring one of the property in his name in the year 1999 as admitted in the affidavit of evidence of the defendant no.2 itself, there was no occasion for the plaintiff to file the testamentary petition for seeking probate earlier. He submits that since only in the police complaint filed on 20th November, 2007 by the defendants it was alleged that the Will was used by the plaintiff to get the property situated at Pen in the name of the mother in the kvm TS65.09 -corrected name of Mr. Rajiv Datta, the plaintiff was required to file a petition for probate.

63. It is submitted that in any event, since the said Pen property was already transferred as per the Will of the mother to the knowledge of the defendants, the delay of 12 years in filing the probate is irrelevant. He submits that there is no contradiction in the Memorandum of Understanding and the Will. Insofar as the submission of the defendant no.2 in respect of the alleged suspicious circumstances in the execution of the Will is concerned, the learned counsel for the plaintiff placed reliance on the deposition of the defendant no.2 in reply to question nos.1 to 4 and 29. He also placed reliance on the evidence of Shri Ketan Shinkar and in particular reply to question nos.1 to 8.

64. It is submitted that the plaintiff has also referred to the round seal in his evidence. He also invited my attention to the evidence of the Joint District Registrar examined by the defendants and in particular his reply to question nos.1 and 4 to

10. He submits that only one Will is produced by all the parties. Neither another Will was propounded by the defendants nor produced. He submits that on the basis of preponderance of probability, the Will propounded by the plaintiff shall be accepted by this Court. The plaintiff has already proved the execution, kvm TS65.09 -corrected attestation and registration of the said Will. Any irregularity by the staff of the Sub-Registrar's Office will not affect the genuineness of the Will.

DW - 1 from the office of the Sub- Registrar has disagreed with the suggestion of the defendant no.2 in his examination in chief.

65. Insofar as Index - III relied upon by the defendants is concerned, learned counsel for the plaintiff submits that the said Index - III does not show who was the executor of the Will in Column no.3. The said Index - III was prepared by the Clerk from the office of the Sub-Registrar of Assurances.

66. Learned counsel for the plaintiff placed reliance on Rule 55(4) of the Maharashtra Registration Manual, Part - I. He submits that Index - III produced by the defendants refers to the same number what is mentioned on the registered Will propounded by the plaintiff i.e. No.4184. The plaintiff has already explained Index - III sufficiently and there is no suspicious circumstances. The witness examined by the defendants from the office of the Sub-Registrar of Assurances himself has denied the suggestion put to him by the defendant no.2.

67. Insofar as the Day Book Register relied upon by the defendants is concerned, it is submitted that the said Will was kvm TS65.09 -corrected collected by the father of the executor, who admitted in his evidence about the collection of such Will from the office of the Sub-Registrar of Assurances. The father of the plaintiff was present at the stage of registration of the Will at the residence of the executrix. In reply to question nos.11 and 12, the father of the executor who was examined as the witness by the defendants admitted the suggestion put to him in question nos.11 and 12. He submits that in any event insofar rectangular stamp affixed on the said registered Will produced by the plaintiff is concerned, the same may be a mere irregularity and would not affect the execution and attestation of the Will in question.

68. The defendant no.2 on behalf of herself and on behalf of the other defendants in rejoinder submits that in the Memorandum of Understanding executed by the parties, to which father of the defendants and Mr. Rajiv Datta was also a party, two of the properties mentioned in the Will of the mother were also mentioned in the Memorandum of Understanding. The father was not even aware of the Will of the mother.

69. The defendant no.2 placed reliance on the answer of PW

- 3 examined by the plaintiff and would submit that the said witness was 23 years old, whereas the alleged document was about 20 years old. She submits that section 70-D(1)(a) of the kvm TS65.09 -corrected Maharashtra Registration Manual has not been complied with. She invited my attention to the reply given by the said witness to question nos.7 and 8 on the issue of stamp payable on the photocopy of the alleged Will and would submit that the said witness did not give reply to various questions. The plaintiff had allegedly acted on the advice of Mr.Damle, a senior advocate of this Court. The seal of the Registrar's Office was missing in the copy issued by the Sub-Registrar.

70. It is submitted by the defendant no.2 that the father of the plaintiff who had allegedly collected the said Will from the office of the Sub-Registrar had not even read the alleged Will. Index- III produced by the defendants clearly proved that there was a different Will than the will propounded

by the plaintiff. The executors in the said Will reflected in Index - III were also different. The defendants were not aware of the transfer of Pen property fraudulently by Mr. Rajiv Datta, son of the deceased mother. She relied upon the cross-examination of DW - 2 and more particularly in reply to question no.11.

71. The defendant no.2 placed reliance on Rule 70-D(1) of the Maharashtra Registration Manual and would submit that the identification stamp was absent in the document relied upon by the plaintiff. However, there was no seal in the copy obtained by kvm TS65.09 -corrected the defendants from the office of the Sub-Registrar. There was no round seal on the original of the alleged Will. The evidence of the witness examined by the plaintiff was false. The plaintiff did not clarify the difference in configuration. The figures, placement of the stamp on the alleged Will is different. The documents are not in compliance with Rule 70-D(1)(b) of the Maharashtra Registration Manual.

72. Reliance is placed on Rule 52(2) of the Maharashtra Registration Manual by the defendant No.2 and would submit that the officers have not carried out their duties as contemplated under the said rule while preparing Index - III at book no.3. Page 188 of Volume - D would indicate the name of the executors of the Will as Seema Datta and Rebica R. Datta of their brother.

73. It is submitted that entry no.4184 in Index - III at page 189 would indicate that the alleged Will was collected by the father of the plaintiff on 20th January, 1997. She relied upon the answer given by the said witness to question no.15 and would submit that the father of the plaintiff had no authority to collect the alleged Will. He had not even read the said alleged Will and did not inform about such alleged Will to any party for about 12 years. She relied upon the answer given by the witness to question nos.8 to 11.

kvm TS65.09 -corrected

74. It is submitted by the defendant no.2 that the witnesses examined by the plaintiff did not explain the stamp of Rs.40/- affixed on the said alleged Will. She submits that though it was admitted by the witness examined by the plaintiff that the charges collected by the office of the Sub-Registrar was Rs.5/- per page for copying a document, he could not deny that there were only six pages of the alleged Will though photocopy charges were collected for eight pages. She relied upon the answer of the witness to question no.8.

75. The defendant no.2 placed reliance on the police complaint dated 20th November, 2007 and also a letter of Mr.Damle, a learned senior counsel of this Court dated 27 th April, 2007 and the answer given by the witness examined by the plaintiff to question nos.18, 19, 23 and 24. He submits that the charge sheet has been already filed in respect of the transfer of Pen property against Mr. Rajiv Datta by the concerned police station. She submits that in the mutation entries, the brother of the defendants has illegally got the names of the legal heirs deleted except his own name in respect of Pen property. The signatures of the defendants are forged by Mr. Rajiv Datta, who was the son of the said deceased and is the brother of the defendants.

REASONS AND CONCLUSION:

kvm TS65.09 -corrected

76. I have considered issues No.1,3,4 and 5 together since these issues being interconnected and can be decided based on the common evidence having bearing on the existence of the valid Will or whether the alleged will propounded by the plaintiff is surrounded by suspicious circumstances or not, or whether such Will is forged and fraudulent.

77. Both the parties have examined witnesses for discharging the burden cast on them in the issues framed by this Court. The Plaintiff had examined the alleged attesting witness Dr. Vimal G. Kasbekar (PW-1), the plaintiff himself who claims to be an executor (PW-2), and Mr. Ketan Shinkar, Junior Clerk in the Office of the Joint District Registrar (PW-3). The defendants examined defendant No.2 Mrs. Diana Virwani as one of the witnesses (DW-1). The defendants also examined Mr. Trimbkeshwar S. Tendolkar, the father of the plaintiff as witness (DW-2).

78. It is the case of the plaintiff that the alleged Will was alleged to have been registered at the residence of the said deceased. Advocate Mr. T.S. Tendolkar, the father of the plaintiff was alleged to be a registered witness. The said deceased had expired on 9th December, 1996. It is the case of the defendants that the counsel of this Court who was requested to file a probate petition, had informed about the said alleged Will 10 years after the death of the said deceased by a letter dated 27 th April, 2007. It kvm TS65.09 -corrected is the case of the defendants that they could see the alleged will for the first time only in the month of September 2008, along with the copy of the petition for probate.

79. It is not in dispute that the affidavit of the alleged attesting witness was not filed along with the testamentary petition on 16th July, 2008, but was filed after more than seven years of the filing of the petition i.e. on 6 th May, 2015 when the testamentary petition had come on board of this Court.

80. A perusal of the averments made in the testamentary petition indicates that the plaintiff has not explained the delay of 12 years in filing the testamentary petition, satisfactorily. The only reason disclosed by the plaintiff for filing the testamentary petition after delay of 12 years is that the plaintiff could not arrange for payment of probate fees.

81. During the course of arguments, however, it was the case of the plaintiff that since the Pen property was already transferred as per the said alleged Will of the mother in the year 1999 itself, in favour of Rajiv R. Datta who was the alleged beneficiary under the said Will, there was no need to file the probate petition. It was the submission of learned counsel for the plaintiff that only in view of the police complaint filed by one of the caveatrixes on 20/11/2007 alleging that the alleged Will was kvm TS65.09 -corrected used by the Plaintiff to get the said property situated at Pen which was standing in the name of the deceased, the plaintiff was required to file a petition for probate. The explanation of the plaintiff on one hand that the plaintiff could not arrange for payment of Court Fees for filing the probate petition and on the other hand that there was no necessity to file a probate petition on the ground of Pen property already having been transferred in the name of the alleged beneficiary Mr. Rajiv R. Datta for more than 12 years is ex facie contradictory and false. The plaintiff was required to explain in detail, as to why there was gross delay of 12 years in filing the testamentary petition to dispel the suspicious circumstance created due to such gross delay in filing

the testamentary petition which burden the plaintiff failed to discharge.

82. A perusal of the record clearly indicates that the plaintiff did not ask Mr. Rajiv R. Datta to furnish a copy of the alleged Will or the original thereof for more than 10 years, though he claimed to be the executor appointed under the said Will and the father of the Plaintiff who was consultant of the said deceased came to be appointed as the attesting witness to the alleged registration of the said Will. The plaintiff was staying with his father admittedly at least till 1999 and thus it is difficult to accept the submission of the learned counsel for the plaintiff that the plaintiff was not aware of the execution of any such alleged Will kvm TS65.09 -corrected for more than 10 years from the date of execution of such alleged Will.

83. In so far as the affidavit of the attesting witness PW-1 filed by Dr. Vimal G. Kasbekar is concerned, it is deposed by the said witness that on 16.10.1996 she was present together with Ms. Philomena Rodrigues at the residence of the deceased and in her presence, she subscribed her name, address and the signatures at the foot of the testamentary paper as a witness. She deposed in her affidavit that the said deceased was of sound and disposing mind, memory and understanding to the best of her belief. The said affidavit of the attesting witness was admittedly filed on 6th May, 2015 and was not filed along with the testamentary petition.

84. On the same date, she also filed an affidavit-in-lieu of examination-in-chief, with identical case. The said witness was cross examined by the defendant No.2. The said witness deposed that she had not read the Will before affixing her signature. In reply to question No.13, the said witness admitted that the said deceased was suffering from high blood pressure and was also a diabetic. In reply to question no.16, the said witness admitted that she knew the deceased from 1985 and from the time she knew her, the deceased had problems with mobility and was confined to chairs, and could walk with stick or with some help. On kvm TS65.09 -corrected 16.10.1996, she was in the same position and mentally also she was quite sound. When the witness was asked whether she was aware that after August, 1996, the the minutes book and the bills of the society were written by one of her three daughters who were the caveatrixes in the suit, the witness answered that she was not aware as to who had written the minutes in the book of the society though the said deceased was the Secretary of the said society.

85. In so far as the evidence of Mr. Ketan Ashok Shinkar (PW-3) examined by the plaintiff is concerned, in his examination-in-chief, he produced the Register of Registration No.BBE/4184/96 maintained by the Registration Department for 21.11.1996; Index III for the date 2.12.1996; Day Book for 21.11.1996 of the Sub-Registrar of Assurance; and copy of Will Registration No.BBE/4184/96 maintained in the registration file. He was asked in examination-in-chief recorded in Court as to who normally does entry in Index-III. He replied that it was made by the concerned clerk of the office of the Sub-Registrar of Assurance. The said witness was cross examined by the defendant No.2. In reply to the question as to whether the office of Sub-Registrar maintains a photo copy of the Will that is registered, he replied in the affirmative and further deposed that it was a photo copy that he had produced. The witness was asked whether he would agree that in the original Will there were kvm TS65.09 -corrected certain round stamps between two pages and those stamps did not appear in the copy that he had certified as a true copy, the witness answered that the rubber

stamp was normally put on the original Will and copy does not contain any such stamp. Office of the Sub-Registrar keep a xerox copy of the Will before putting the stamp. When the witness was asked that in the certified copy there was a black rubber, he replied that it is a final registration stamp. When asked on what basis index III is filled up, he answered from the document which is registered.

86. In reply to question no.8, when he was asked whether he had put a rectangle 'page number' stamp and also a round stamp, the witness answered that during the period when the said Will was registered, the rectangle stamp was put on some and not put on some. When the witness was asked whether he could explain as to on what basis his office had collected fees of Rs.100/- split into Rs.20 + Rs.40 + Rs.40, he could not answer the said question stating that he was not working in the department at that time. When the witness was asked whether he was aware that under the Registration Act if there are any corrections or blanks etc. a note of such blank or corrections are made in a separate register, which was that register, the witness replied that he did not know.

87. The plaintiff himself filed an affidavit-in-lieu of kvm TS65.09 -corrected examination-in-chief dated 8th June, 2015 and was examined as PW.2. In his affidavit in lieu of examination in chief, the witness deposed that he is an Advocate and was appointed as the sole executor under the said alleged Will. His father was also an Advocate of the said deceased late Catherine Rebendra Datta for last many years. He deposed that over a period of time he became friendly and acquainted with the deceased and her family.

88. In paragraph 5 of his affidavit, he deposed that in the first week of April 2007 the son of the deceased Rajiv R. Datta handed over the Will dated 16th October, 1996 executed by the said deceased, to him. He produced a copy of the alleged registered Will, registered on 21.11.1996 bearing No.BBE-4184 and deposed that the said Will bears seal and stamp of the Sub- Registrar, Mumbai and stamps of Registrar on all pages of the document.

89. In paragraph 7 of the affidavit, he deposed that after receiving the Will from Mr. Rajiv R. Datta as an executor of the Will, issued a notice dated 27.4.2007 through Advocate Atul Damle, to all the legal heirs of the deceased informing about the Will and requested them to pay the charges for Court fees and expenses for obtaining probate of the Will of the deceased.

90. In the cross examination of PW.2 when he was asked kvm TS65.09 -corrected whether on the last two pages of the Will there were rubber stamps put in black ink, he answered that it looked like black. He also agreed that the written portions in those two pages were in black. When the witness was asked whether he could tell why there was over writing in the figure "40" (will write in Hindi)... on the 5th page of the Will, he answered that he was only the executor of the Will and that he was not a part to preparation of the Will. The witness deposed that the said deceased never visited the office of his father when he happened to meet the said deceased. However, he got acquainted with the deceased since she was regular client of his father for income tax purposes and she used to consult his father. He deposed that he saw the original Will for the first time in the month of April, 2007.

91. When the witness was shown Exhibit D-1/1 and was asked that he had stated in paragraph 5 of Exhibit D-1/1 that in the third week of September, 2006, the deceased had come to his father's office to meet the witness and at that time the deceased expressed his desire of preparing his Will and as he was already named as an executor in the Will dated 16th October, 1996 of the deceased Mrs. Catherine Rebendra Datta, he answered in the affirmative.

92. When the witness was asked then how did he say that he came to know about the Will only in April, 2007, the witness kvm TS65.09 -corrected answered that he had only stated that he was informed by Mr. Rebendra Narayan Datta that he was appointed as an executor in his wife's Will and that he had not seen the Will at that stage. He did not ask him for a copy of the Will at that stage. The said witness admitted that though Rebendra Narayan Datta had informed that he was appointed as an executor, he did not make any attempts to find out about the said will after demise of Mr Rebendra Narayan Datta. He did not explain as to why he did not make any such attempts to find out the alleged Will of the deceased.

93. The witness expressed ignorance about the Index III shown to him. He also expressed ignorance about as to who had collected the original Will from the Office of the Registrar. He admitted that he had not verified personally whether the flat in Goa, Navalkar Estates and the third flat in Poona in the building Maya Classic, Lulla Nagar, Pune 411 040 were existed or not when the testamentary petition was filed by him as an executor. Since his Advocate had drafted the testamentary petition under his instructions, it was stated in the schedule that the said flat was self occupied. When this Court asked the question that on what basis he gave instructions, the witness deposed that he assumed that the flat was self occupied. Since there were several properties of the deceased, it was not possible for him to personally verify each and every property. When he was asked that if he could not kvm TS65.09 -corrected have verified the properties of the deceased, why did he take the role of an executor, he deposed that in view of his relationship with the family, he assumed the role of an executor, he deposed that in view of his relations with Mr. Rebendra Narayan Datta and Mrs. Catherine Rebendra Datta, he assumed the role of an executor.

94. On the issue of delay he deposed that he got the original Will in April, 2007 and he immediately instructed his advocate. There was no delay in the matter.

95. The defendants examined Mr. Anil Rambhau Deo, Joint District Registrar as DW-1. The learned counsel for the plaintiff made a statement that the evidence of the said witness be recorded without prejudice to their rights and contentions in the notice of motion lodging No.112 of 2017.

96. The said witness in his examination-in-chief admitted that as per Section 41 of Maharashtra Registration Manual, Part I, the Will bearing No.1277of 2008 is a registered Will. He made the statement on the basis of stamps and signature of the office of the Sub-Registrar, Mumbai. He made that statement on the basis of the endorsement at page No.6. He admitted that 'Bambai' (will right in devnagri) number which is mentioned on page 6 should have been entered on all pages, but in this Will it does not appear kvm TS65.09 -corrected to have been entered. He admitted that as per Section 70-D(1)(a) of Maharashtra Registration Manual, Part I, every document admitted to registration under Section 35 or Section 41 shall be carefully marked with an identification stamp

and the serial number of the document on every page, however, it has not been done in this case. The witness did not agree with the suggestion that at page No.2 of document Exhibit P.9, there was no round seal which was there in the original Will. When the witness was asked whether requirement of Section 70-D (1)(a) of Maharashtra Regulation Manual, Part-I has been complied with or not, the witness admitted that it has not been complied with at that time.

97. In reply to question no.7 when he was asked whether he remembered about charges for photocopying and stamp at the relevant time, i.e. in the year 1996 he deposed that he was not sure, but might be it was Rs.5/- per page for photocopying and the stamping charges were about Rs.20/-. In reply to question no.8, when he was asked whether it would be correct that since stamp was shown Rs.40/- on page 5 of the Will, the number of pages were 8 at Rs.5/- per page, the witness deposed that there were only 6 pages in the said document and he did not know how and why they took Rs.40/- at that time.

98. In reply to question no.10, when the witness was asked about the procedure to collect the original registered Will from kvm TS65.09 -corrected the Department if the Testator dies before collecting the original Will, the witness deposed that the Testator has to come and collect the original personally. If the Testator dies, then the beneficiary mentioned in the Will, will generally come with the death certificate and photo identity and after checking the same, the original Will is handed over by the office. When the witness was shown Exhibit P-7 and was asked to identify the person who collected the document at serial no.4184, he deposed that he was unable to state from the said document exactly who had collected the original document. When the witness was asked whether his office checked before handing over the original document whether stamps were put wherever required or not, he replied that it is done, but he is not sure whether it was done at that time or not.

99. The plaintiff did not cross examine this witness at all. The evidence of this witness examined by the defendants remained uncontroverted.

100. The defendants filed affidavit-in-lieu of examination in chief of defendant No.2 as one of the witnesses on 19.4.2017. She deposed that Advocate Mr. Trimbakeshwar S. Tendolkar was a Chartered Accountant of her mother, till her demise and was aware of the properties belonging to the deceased mother. One of the caveatrixes had addressed a letter through her Advocate to the kvm TS65.09 -corrected Advocate Mr. Trimbakeshwar S. Tendolkar to show her a copy of the alleged Will document. Neither the said Mr. Trimbakeshwar S. Tendolkar, nor the plaintiff replied to the said letter.

101. In paragraph 19 of her affidavit, she deposed that the Index-III document dated 2/12/1996 retrieved by the caveatrixes from the Registrar's Office on 2nd August, 2016, revealed that Mrs. Seema Datta, Mrs. Rebecca & Mr. Rajiv Datta were the actual Executors of the registered Will document Sr. No.BBE- 4184-96. It was deposed that the said Mr. Trimbakeshwar S. Tendolkar was neither the Executor, nor the beneficiary, nor the legal heir of the deceased and fraudulently collected the Will from the Office of the Registrar.

102. Defendant No.2 in her affidavit-in-lieu of evidence deposed about various discrepancies in the documents produced by the plaintiff and his witnesses and more particularly, about various stamps, endorsements, seals, signatures, charges collected for photocopying, etc. It was also deposed that the first four pages of the sixth page of the Will document copy did not have stamp of the Sub-Registrar. Copy of the alleged Will was collected by Advocate Mr. T.S. Tendolkar, identifying himself as an executor of the Will though the plaintiff claimed to be the executor. The Will showed different configuration in handwriting of the Sub- Registrar's stamps. It was deposed that all 6 copies at the kvm TS65.09 -corrected Registrar's Office were not photocopies of the alleged original document produced before this Court.

103. Defendant No.2 was cross examined by the plaintiff's counsel. In her cross examination, she identified her signature on the Memorandum of Understanding dated 20 th September 2006. The said MOU was prepared by Mr. Rajiv Datta. The witness denied the suggestion that she was aware of the execution of the Will dated 16.10.1996 left by her deceased mother. A perusal of the cross examination of DW.2 clearly indicates that there is no cross examination of this witness on various discrepancies pointed out by DW.2 in her examination-in-chief about the rubber stamp, various endorsements made on the document produced by the plaintiff though his witness, discrepancy about stamping charges collected by the Registrar's Office on the basis of the number of pages of the document produced by the plaintiff, collection of the alleged original document fraudulently by Advocate Mr. Trimbkeshwar Tendolkar, some of the properties. Deposition is made by defendant No.2 about the alleged document produced by the plaintiff as fraudulent, manipulated, changed sometime after 2.12.1996 and being fabricated. Respondent No.2 had also strongly placed reliance on Day Book document which clearly reveals that Advocate T.S. Tendolkar has an executor had collected the alleged original document registered with the Sub-Registrar dated 21.11.1996. However, kvm TS65.09 -corrected did not disclose about the said document for more than 10 years.

104. It was specifically deposed that in Index III document dated 2.12.1196, the names of Mrs. Seema Rebendra Datta, Mrs. Rebecca Rebendra Datta and Rajiv Rebendra Datta were shown as the only executors on the registered Will document bearing No.BBE-4184-96. There was no cross examination on this crucial aspect also.

105. The defendants had also examined Mr.Trimbkeshwar Tendolkar, as one of the witnesses. He admitted that he identified his signature in Exhibit P-7 and deposed that he had not read the Will after that was collected from the Office of Sub- Registrar. He did not remember whom did he hand over the Will after collecting the same from the Office of Sub-Registrar. Since he had not read the original Will, he would not be able to say that the copy annexed to the testamentary petition was the copy of the original Will or not. In reply to question no.3 as to when did he last attend his Baria Mension Office, he deposed that he had visited the said office about 2 to 3 years back. He admitted that the said testatrix was bedridden. He did not remember as to who else was present on the date of registration of the Will apart from the said witness.

106. Though the witness admitted that he had attested the kvm TS65.09 -corrected Will in the year 1997, he did not read the Will. He did not remember whether he had compared the original Will with the photo copy of the Will before certifying as a true copy. He admitted that normally before

certifying any document as a true copy, it has to be compared with the original thereof. He deposed that since he had full faith on the deceased testatrix and her son, he did not compare the photocopy of the Will with the original Will. He deposed that he had not described himself as an executor while collecting the original Will from the Office of the Sub-Registrar. The Sub-Registrar must have filled in the said column no.4.

107. When the witness was asked as to how he introduced himself in the office of Sub-Registrar while collecting the original Will from the Sub-Registrar's office, he deposed that he had not introduced himself as the authorised person to collect the said Will. He used to visit the office of Sub-Registrar frequently, and in view thereof he was allowed to collect the original Will from the Office of Sub-Registrar.

108. In his cross examination, when a suggestion was put to him by the plaintiff's counsel that the said witness was the witness to the registration of the Will at Exhibit P 1/2 registered with the Sub-Registrar bearing Entry No.4184 dated 21st November, 1996, he answered the said question in the affirmative. When the kvm TS65.09 -corrected witness was put a suggestion that he had collected the Will from the Sub-Registrar's Office in his capacity as a witness at the time of registration of the Will, he answered that he used to visit regularly in the Office of Sub-Registrar for the purpose of registration of several documents and in that capacity he had collected the Will from the Sub-Registrar's Office.

109. Though the Defendant No.2 had got witness summons issued upon Mr. Atul Damle, a Senior Advocate to examine him as a witness on behalf of the defendants, she made a statement that she did not propose to examine him as a witness.

110. A perusal of the pleadings and the evidence, clearly shows the suspicious surrounding circumstances in execution of the alleged Will on 16.10.1996 alleged to have been executed by the said deceased Mrs. Catherine Rebendra Datta, who died within a short span of the alleged execution of the Will. The suspicious surrounding circumstance noticed by this Court are as under :

(I) The alleged document was suppressed by the Plaintiff from the daughters (caveatrixes). The defendants (caveatrixes) were informed about the alleged Will by the counsel of this Court more than 10 years after the death of the deceased by letter dated 27.4.2007.

kvm TS65.09 -corrected (II) There is a gross unexplained delay of 12 years in filing the testamentary petition by the plaintiff.

(III) The alleged explanation of delay of 12 years that the plaintiff could not arrange for payment of probate fees, is ex facie false and cannot be accepted.

(IV) Index III produced on record indicates that by the said Will two of the caveatrixes and Rajiv R. Datta were appointed as executors.

(V) The said Will appears to have been registered under the same registration number under which the Will propounded by the plaintiff was alleged to have been registered.

(VI) The Index III dated 2.12.1996 clearly showed the name of the said Ms. Seema Rebendra Datta, Ms. Rebecca Rebendra Datta and Rajiv Rebendra Datta officially recorded in the index III as the executors of the said Will with registration No.BBE- 4184-1996.

(VII) The alleged Will propounded by the plaintiff shows the name of the plaintiff as its executor. The plaintiff showed ignorance about the Index III document produced on record showing three different executors and not the plaintiff in respect of the Will registered under the same number.

(VIII) PW.3 i.e. Joint District Registrar, in his evidence admitted that the documents when recorded in Index III are kvm TS65.09 -corrected always authenticated by the Sub-District Registrar at their office.

(IX) The Day Book maintained by the Sub-Registrar showed that the father of the plaintiff Mr. T.S. Tendolkar had falsely misrepresented himself to the Registering Authority as executor under the said Will and collected the alleged original Will from the Office of the Registrar of Assurance with any authority.

(X) No acknowledgment of the father of the plaintiff was produced by the Office of Registrar of Assurance while collecting the alleged original Will.

(XI) The father of the Plaintiff, who was examined as one of the witnesses by the caveatrixes , admitted that he had collected the alleged original Will as he used to go to the Office of the Registrar of Assurance frequently for registering various documents.

(XII) Neither the alleged original Will, propounded by the plaintiff, nor a copy thereof was shown to the caveatrixes till the Petition was filed by the plaintiff.

(XIII) The father of the plaintiff had allegedly collected the Will on 20.1.1997 and did not inform the caveatrixes of the said alleged Will for about 12 years.

(XIV) The Joint District Registrar, in his evidence admitted that a beneficiary can collect the original Will document from the Office of Registrar of Assurance. Mr. T.S. Tendolkar was neither kvm TS65.09 -corrected the beneficiary under the alleged Will, nor had any authority to collect the said alleged Will. He had not even collected the said Will in his capacity as an alleged witness at the time of the alleged registration of the Will.

(XV) The copy of the replaced alleged Will at the Office of the Registrar of Assurance is without any seal of the Registrar or the Sub-Registrar on the first five pages. None of the pages have the identification stamp which denote page number and Will number.

(XVI) The Will propounded by the plaintiff does not appear to be part of the registered document with Registration No.BBE- 4184-1996.

(XVII) Mr. T.S. Tendolkar, in his evidence admitted that he had not read the Will, nor he knew as to who drafted the said Will. He issued the copy of the said alleged Will duly certified as true copy without comparing the same with the original alleged Will and handed over a copy thereof to Mr. Rajiv Datta, who got the Pen property i.e. one of the properties of the deceased in his name based on such alleged true copy issued by Advocate Mr. T.S. Tandolkar. Since he had also not read the alleged original Will, he could not have issued any true copy, without reading the alleged original Will and without comparing such alleged original Will with the copy.

(XVIII) The square shaped identification stamp on all the pages kvm TS65.09 -corrected of the alleged Will propounded by the plaintiff is absent. The square shaped identification stamp denotes registration number, office name, page number, total number of pages and the Registrar's office particulars recorded on every page. Last two pages of the registration of the alleged Will did not have identification stamp.

(XIX) PW.3, the Joint District Registrar admitted in his evidence that every page of the registered will document always have BBE number, serial number and square shaped identification stamp imprinted during the registration. Such details are admittedly missing in all the pages of the document of alleged Will propounded by the plaintiff.

(XX) Configurations of the locations of seals and signatures of the Sub-Registrar and handwriting on 6th page of the Will copy at the Registration Office are totally different and did not match with 6th page of the alleged Will annexed to the Petition filed by the plaintiff.

(XXI) Handwriting of the Sub-Registrar on registration no. BBE-1484-1996, Book No.3 dated 2.12.1996 is totally different than the handwriting on the 6th page of the alleged Will and the copy of the alleged registered Will.

(XXII) Last 2 pages of the alleged Will filed by the plaintiff in this Court have all stamps, seals signatures in black colour which kvm TS65.09 -corrected clearly suggests that the last 2 pages of the Will are photocopies and not originals.

(XXIII) The plaintiff in his evidence agreed that last two pages were entirely in black ink. Though the photocopying rate to be charged by the Registrar's Office which was at the rate of Rs.5/- per page in the year 1996 and though the Registrar's Office had collected 40 rupees towards photocopying charges, the alleged Will produced by the Plaintiff showed only 6 pages. It is clear that the Will which was registered with the Registrar of Assurance appointing two of the caveatrixes and Mr. Rajiv R. Datta as an executor, was not propounded or produced by the plaintiff, but a forged and fabricated document was propounded.

111. The learned Counsel for the plaintiff could not controvert the ex facie forgery committed by his client and could not justify as to how his client could dispel the aforesaid surrounding suspicious

circumstances.

112. It is not possible to believe that the father of Mr. Rajiv R. Datta and the caveatrixes would not know about the alleged Will executed by his wife about 10 years back. The story of the plaintiff that said Mr. Rebendra N. Datta had told the plaintiff about the Will of his wife appointing the plaintiff as the executor is ex facie false and misleading. Even in the said MOU it was the wish of the mother that the defendant No.2 should get the kvm TS65.09 -corrected property i.e. 105, New Pavan Vihar, Bandra, Mumbai. However, in the alleged Will propounded by the Plaintiff, it is shown that defendant No.2 was disinherited by the said deceased mother in the said alleged Will.

113. The deceased father of the parties had filed nomination form in respect of the two properties i.e. (1) 13, Mistry Park, 77, Bhulabhai Desai Road, Mumbai and (2) 105, New Pavan Vihar, Bandra West, Mumbai on 28.5.2005, nominating all the four children in respect of those two properties.

114. Charge sheet has already been filed against Mr. Rajiv R. Datta and ex-Talathi of Pen Mr. Shrikant More on 23.12.2015 on a complaint filed by defendant no.2. The said Mr. Rajiv R. Datta has not been examined as a witness, though he was allegedly involved in fabricating the Will of the deceased.

115. The said deceased was admittedly a client of Mr. T.S. Tendolkar, father of the plaintiff. The plaintiff admittedly resided with his father at the same address till 2009. However, he falsely stated that he was not aware of the Will of the said deceased till 2007. The plaintiff did not inquire from his father about the alleged Will for more than 10 years. He also did not ask Mr. Rajiv R. Datta for producing the copy of the Will to enable him to file a probate petition. The plaintiff in his evidence deposed kvm TS65.09 -corrected that he did not have any property document in his possession and did not know even if they existed or not.

116. The evidence of PW.1 who was one of the alleged attesting witnesses, would show that though the said witness admitted that she had never read the alleged Will document, contrary to such statement she deposed that she had vouched for the entire six page document. Defendant No.2 has proved in her evidence that the said deceased was bedridden, had high blood pressure, suffering from diabetic since 1985, was unable to walk and was suffering from spinal problem as well as suffering from visual problem. She was operated for cataract of both of her eyes five months prior to her demise.

117. Mr. T.S. Tendolkar, who was examined as a witness by the defendants, admitted that the said deceased was bedridden. DW.2 did not remember time and day of execution of the alleged Will though he claimed to be one of the attesting witnesses at the time of registration of the said alleged Will. The plaintiff admitted in his cross examination that he had seen the alleged Will document for the first time only after 10 plus years in April, 2007 and claimed that he was not aware who had drafted the said Will document.

118. The official examined from the Office of Sub-Registrar kvm TS65.09 -corrected of Assurance confirmed that the original Will of the said deceased was presented for registration

No.BBE-1484-1999 bearing names of Seema Datta, Rebendra Datta and Rajiv Datta, as the executors.

119. In my view, since several such surrounding suspicious circumstances were brought to the notice of the Court by the caveatrixes, to which this court finds substance, it was for the plaintiff to dispel such surrounding suspicious circumstances and to clear the doubt in the mind of the Court about such alleged Will propounded by the plaintiff, which the plaintiff miserably failed.

120. In my view, the plaintiff as well as his father and Mr. Rajiv R Datta have played a role in fabricating the Will of the deceased mother of the said Mr. Rajiv Datta and the caveatrixes. The plaintiff has failed to dispel the suspicious circumstances and has failed to prove the execution of the alleged Will propounded by him.

121. In my view, there is no substance in the submission of Mr. Kanade, learned counsel for the plaintiff that the plaintiff could not file the probate petition earlier since his client could not make arrangement for payment of probate fees and other costs TS65.09 -corrected expenses required to be incurred. The said Mr. Rajiv R. Datta had already transferred one of the properties of the said deceased even before obtaining grant of probate. Contrary to such a stand, the plaintiff has contended before this Court that since the property was already transferred based on certified true copy of the alleged Will by Mr. Rajiv R. Datta, there was no need to file any probate petition in respect of the said alleged Will.

122. Insofar as the submission of Mr. Kanade for the plaintiff that the burden in respect of issues No.3 to 5 was on the defendants and that they failed to discharge such burden is concerned, in my view, there is no substance in the submission of the learned counsel for the plaintiff. The defendants have proved the fraud and forgery in the said Will propounded by the plaintiff not only by cross examining the witnesses examined by the plaintiff, but also by leading separate oral and documentary evidence and by examining other witnesses.

123. Mr. Kanade, learned Counsel for the plaintiff could not explain as to how father of the plaintiff, who was neither a beneficiary, nor had any authority to collect the alleged original Will from the Office of Registrar of Assurance, could mislead the Office of the Registrar of Assurance and could collect the alleged original Will and thereafter, could retain such alleged Will with him for more than 10 years. He also could not explain as to how costs TS65.09 -corrected the record of the Office of the Registrar of Assurance and in particular Index III and the Register could show the same registration number of the Will which is relied upon by the plaintiff, which showed the names of three different executors, namely two of the caveatrixes and Mr. Rajiv R. Datta. He also could not explain as to how the Office of the Registrar of Assurance had though collected Rs.40/- towards photocopying charges for 8 pages at the rate of Rs.5/- per page, why copy of the Will propounded by the plaintiff showed only 6 pages. He could not explain any discrepancy pointed out in great detail by defendant No.2 during the course of her arguments by referring to the documents produced on record.

124. In my view, the plaintiff has failed to discharge the burden cast insofar as issues No.1 and 2 are concerned. In my view, the said Will is totally surrounded by suspicious circumstances and is a

fabricated and fraudulent document. Insofar as issues No.1 and 2 are concerned, for the reasons recorded aforesaid, the same are answered in the negative.

125. In so far as issues no.3 and 4 are concerned, in my view, the defendants have proved that the alleged Will propounded by the plaintiff as a fraudulent and forged one and thus both these issues are answered in the affirmative.

kvm TS65.09 -corrected

126. Insofar as issue No.5 is concerned, the plaintiff has failed to prove the execution of the alleged Will in accordance with law. There is no question of the defendants proving that the alleged Will was procured by undue influence or coercion. The said issue thus does not arise.

127. I, therefore, pass the following order :

Testamentary Suit No.65/2009 is dismissed with costs, quantified at Rs.1,00,000/-, which shall be paid by the plaintiff to the caveatrixes within two weeks from today.

(R.D. Dhanuka, J.)