
In Re: Late Smt. Indra Mohini

**Testamentary Suit No. 5 of 2007 and Civil Miscellaneous Amendment Application
No. 301417 of 2009 (A-28)**

Court: Allahabad High Court

Date of Decision: Sept. 13, 2010

Acts Referred:

Allahabad High Court Rules, 1952 " Rule 6, 7#Civil Procedure Code, 1908 (CPC) " Order 6
Rule 17, 10, 151#Succession Act, 1925 " Section 272, 278, 300#Uttar Pradesh Court Fees
Act, 1870 " Section 7(4)#Uttar Pradesh Estates Act, 1920 " Section 3, 6, 7, 9

Citation: (2011) 113 RD 2

Hon'ble Judges: Sunil Ambwani, J

Bench: Single Bench

Final Decision: Disposed Of

Judgement

Sunil Ambwani, J.

We have heard Shri Ajeet Kumar, learned Counsel for the caveator/defendant. Shri Navin Sinha, Sr. Advocate

assisted by Shri Rahul Sahai appears for the plaintiff.

2. The Testamentary Case No. 1 of 2007, registered as Testamentary Suit No. 5 of 2007 (by order dated 08.05.2007), was filed on 21.11.2006

for grant of letters of administration in favour of the plaintiff- Yuvrani Reena Kumari, the daughter of the deceased-testator Late Rani Indra Mohini

in respect of the alleged will dated 15.11.1984. Shri Chandra Vijay Singh son of late Shri Misri Chandra and Smt. Indra Mohini (the deceased)

filed a caveat under Chapter XXX Rule 6 and 7 of the Allahabad High Court Rules, 1952 raising objections to the grant of letters of

administration, through Shri A.K. Rai and Shri Vishnu Kumar Singh, Advocates on 16.4.2007. The issues were framed on 27.9.2007. An

additional issue was framed on 7.8.2008.

3. The matter was nominated by Hon"ble the Chief Justice on 2.3.2009.

4. On 09.4.2009 an application for impleadment was filed by Shri Surya Vijay Singh through Shri Amit Saxena, Advocate. The Application (A-

19) for summoning the original will dated 15.11.1984 deposited by the testator in the office of the District Registrar, Lucknow, vide Receipt No.

42 for safe custody was allowed. The alleged will was produced by Shri Pramod Kumar Dwivedi, Sub-Registrar in the office of District Registrar,

Lucknow on 14.5.2009 along with the register. It was directed to be kept in the safe custody of the Registrar General, and the matter was fixed

for 16th July, 2009.

5. Shri Ajeet Kumar, Advocate filed vakalatnama in the case on 8.11.2009. He appeared as counsel for caveator/objector Shri Chandra Vijay

Singh for the first time in Court, when the matter was listed on 13.11.2009. He wanted to look into the entire record to make submissions and also

filed application for amending the written statement.

6. Raja Chandra Vijay Singh, caveator/defendant/applicant seeks to amend paragraphs 3, 4, 5, 17, 23, 24 and 25 of the written statement and

wants to add paragraphs 25A to 25N to his caveat/written statement.

7. A preliminary objection has been raised by Shri Navin Sinha that the issues were framed in the suit on 27.9.2007, and additional issue was

framed on 7.8.2008. The Court had directed the issue Nos. 3 and 4 to be decided as preliminary issues. On the date fixed for hearing on

preliminary issues, the amendment application has been filed on 11.11.2009, virtually redrafting the written statement. The caveator intends to

delay the proceedings. The additional paras sought to be added are by way of arguments, which are not required to be made part of the pleading.

He submits that the change of counsel and his advice should not be taken to be a valid ground to amend the pleading. The entire object of

amendment application is to delay and complicate the proceedings. He relies upon the amended proviso to Order VI Rule 17 of the Code of Civil

Procedure, 1908. The proviso added to Order VI Rule 17 CPC provides:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite

of due diligence, the party could not have raised the matter before the commencement of trial.

8. Shri Ajeet Kumar submits that the Courts should adopt liberal approach in allowing the amendments, which can be filed at any stage of the suit.

He submits that the caveator defendant should get an opportunity to make proper pleading. In the present case the proposed amendments do not

change the nature of the suit and have been applied for at the earliest opportunity, after he was engaged as counsel for the caveator and found that

the necessary pleadings have not been made in the written statement. He has relied upon the judgment of the Supreme Court in Smt. Naseem

Bano Vs. State of U.P. and others, Andhra Bank Vs. ABN Amro Bank N.V. and Others, Sushil Kumar Jain Vs. Manoj Kumar and Another,

B.K.N. Pillai v. P. Pillai and Anr. 2000 (38) FLR 338 in support of his submission.

9. I have gone through the original pleading and the paragraphs sought to be amended and added by the amendment application. In the caveat

application filed by Shri Chandra Vijay Singh, it is stated by him that he has filed an Original Suit No. 505 of 2006 in the Court of Civil Judge

(SD), Moradabad on 22.7.2006 in respect of the properties in dispute for permanent and mandatory injunction, restraining Smt. Reena Kumari

from interfering in his peaceful possession over the properties. In para 4 it is stated that Smt. Reena Kumari has filed written statement in the

original suit on 30.10.2006 and is contesting the suit. In para 5 it is stated that Smt. Reena Kumari has filed the present case without disclosing the

entire facts i.e. the Original Suit No. 505 of 2006. In para 6 it is stated that the petitioner applicant was required on the first date of hearing to

furnish the entire and better details in regard to kith and kin of Smt. Indra Mohini; in pursuance thereof she has filed another affidavit and stay

application, wherein she has also prayed for injunction against the defendant-respondent and has further prayed for staying further proceedings in

Original Suit No. 505 of 2006. In para 7 it is stated that the petitioner applicant has deliberately concealed institution of Original Suit No. 505 of

2006 on 22.7.2006 and filing of written statement by her in that suit on 30.10.2006. In para 8 it is stated that the suit is in respect of properties of

the estate of Sahaspur Bilari, Distt. Moradabad. His mother late Smt. Indra Mohini had no right to execute any deed or will in respect of the

properties in question on the ground that in pursuance to the gazette notification dated 26.6.1908, and according to the provisions of U.P. Estate

Act of 1920, which is still applicable in respect of the Estate of Sahaspur Bilari, the deponent is the only successor, heir, owner and having

exclusive right, title and interest over the entire properties belonging to Sahaspur Bilari Estate. In para 9 it is stated that Smt. Indra Mohini was

neither the owner nor had any right or title to divest the properties to any person in any manner whatsoever. The will dated 15.11.1984 alleged to

be executed by Smt. Indra Mohini is void on the grounds mentioned in plaint of Original Suit No. 505 of 2006. In paras 11, 12 and 13 it is stated

that the present proceedings are only with regard to grant of probate or letters of administration in respect of alleged will dated 15.11.1984,

executed by late Smt. Indra Mohini and the civil suit instituted by deponent in civil court in respect of entire properties. Since the suit is earlier in

point of time, the present proceedings are liable to be stayed u/s 10 of the CPC and that further proceedings be stayed so that justice be done.

10. In the plaint of the Original Suit No. 505 of 2006 Raja Chandra Vijay Singh has pleaded the rule of primogeniture to succeed to the estate. On

the death of his father Raja Jagar Kumar Ji on 7/8th March, 1934 in motor accident, he left behind his widow Rani Pritam Kaur as Senior Rani

and Rani Jai Dei Kunwar as Junior Rani and one daughter Smt. Indra Mohini Ji. The Suit No. 65 of 1953 by Smt. Jai Dei Kunwar was decided on

22nd January, 1962 upholding the rule of primogeniture. The appeals in the High Court were decided on 9th November, 1965 upholding the rule

of primogeniture by U.P. State Act, 1920 to be applicable to the properties inherited by the only male heir. With regard to the will of Smt. Indra

Mohini (died on 26.9.2005) it is stated in the plaint, that through this alleged will dated 15.11.1984 Smt. Reena Kumari, the daughter of Smt.

Indra Mohini and sister of the plaintiff started claiming her rights. In para 23 it is stated by the plaintiff that his mother Smt. Indra Mohini Ji never

executed the alleged will in favour of the defendant No. 1 on 15.11.1984. In para 24 it is stated that execution of the will is clearly denied. In para

24A the rule of primogeniture has been reiterated and in para 24B, C, D and E it is stated that execution of the alleged will is denied and that even

if she had signed the will, the signature has been obtained by taking advantage of the close relations, undue influence, coercion and false

representation. She had not signed the will with her free will and consent. The relationship of the plaintiff and his wife with his mother was cordial,

and thus in the presence of plaintiff, his wife and children, it is impossible that Rani Indra Mohini Ji has executed will of her entire property in favour

of her daughter. Smt. Reena Kumari claimed that the will has been kept in deposit, in sealed cover in the office of the Registrar at Lucknow but

that no information of opening the envelope and getting the alleged will registered was given to him. In the next paragraph it is stated by the plaintiff

that if the alleged will dated 15th November, 1984 is found to be valid, in accordance with law, which is not admitted to him, in such condition, at

best the will can be held to be effective to the extent of the private property of Smt. Indra Mohini. The rest of the allegations are the repetitions of

the earlier paragraphs.

11. The defendant has relied upon the averments of the plaint in para 10 of his caveat/written statement. A Article from elaborating the averments

in the caveat, no further or effective plea has been taken in the proposed amendments. The details given in the amendment application are by way

of evidence, to be led in rebuttal of the proof of will.

12. The pleadings are not required to be drafted as arguments or be repetitive ad infinitum to say the same thing, in every paragraph. In this case

the change of counsel, appears to be the only reason to file the amendment application.

13. I find that the proposed amendment filed after more than two years of framing of issues, is wholly superfluous. The submission that the Court

should be liberal in allowing the amendment application, does not mean that the court should permit evidence to be led in pleading and permit the

party to the suit to make unnecessarily elaboration of the same facts in different words and form. The object of the amendment in Order VI Rule

17 CPC is to facilitate the progress of the suit, which is often held up by unnecessary and superfluous amendment applications.

14. The amendments may be allowed on the ground that if the facts stated in the amendment application are not brought on record, the defence

will suffer. The amendment may also be allowed to curtail multiplicity of proceedings. In the present case no such plea can be taken as the probate

court has exclusive jurisdiction to grant probate of wills, vide Chiranjilal Shrilal Goenka (Deceased) through Lrs. Vs. Jasjit Singh and Others, The

proceedings for grant of probate are proceedings in rem and that the Court does not ordinarily deny leading of relevant, cogent and admissible

evidence, in proof of the will or in support of the objections to the proof of the will.

15. The principles governing the grant or refusal of amendment applications under Order VI Rule 17 CPC have been summed up in Revajeetu

Builders and Developers Vs. Narayanaswamy and Sons and Others, as follows:

Factors to be taken into Consideration While Dealing with applications for amendments:

67. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while

allowing or rejecting the application for amendment.

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case?

(2) Whether the application for amendment is bona fide or mala fide?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? and

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of

application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only

illustrative and not exhaustive.

15. In the present case the rejection of the amendment application will not prejudice the case of the caveator/defendant; leads to injustice, or will

cause multiplicity of proceedings.

16. The amendment application dated 8.11.2009 (A-28) is accordingly rejected.

Order on Issue No. 4 (decided as preliminary issue)

17. In this testamentary suit the issue No. 4 is framed as follows:

4. Whether the present proceeding is maintainable when the parties are litigating their rights, title and interest in respect of the entire properties

before Civil Court, Moradabad in Original Suit No. 505 of 2006?

18. On the same day, when the issues were framed, the Court observed that issue Nos. 3 and 4 shall be decided as preliminary issues. On

7.8.2008 the Court declined the request of Shri Tarun Agrawal that issue No. 3 may be deleted as it is redundant and framed issue No. 4-A. On

14.5.2009 after hearing Shri Navin Sinha, Sr. Advocate, counsel for the plaintiff and Shri R.N. Singh, Sr. Advocate assisted by Shri Amit Saxena

for Shri Surya Vijay Singh, caveator/defendant the Court observed as follows:

I find that there is agreement between the parties that issue No. 3 may not be decided as preliminary issue and that their objections are valid.

19. The orders dated 27.9.2007 and 9.4.2009 were modified to the extent that issue No. 3 shall not be decided as a preliminary issue. The

hearing on preliminary issue will be confined only to issue No. 4.

20. I have heard Shri Navin Sinha, Sr. Advocate for the plaintiff and Shri Ajeet Kumar for the caveator-defendant, on issue No. 4 as preliminary

issue.

21. The Original Suit No. 505 of 2006 was filed in the Court of Civil Judge (SD), Moradabad on 22.7.2006 by Shri Chandra Vijay Singh,

caveator/defendant in this testamentary suit (filed on 21.11.2006) for the reliefs:

(a) the plaintiff according to U.P. State Act, 1920 and the customs prevailing in the family of the parties of Sahaspur Bilari Estate is sole owner and

occupier from his birth and thus defendant No. 1 be restrained by permanent injunction, appropriate order or direction to dispossess the plaintiff

forcibly from the movable and immovable property of Sahaspur Bilari Estate nor transfer or get transferred such properties in any manner.

(b) If in the opinion of the Hon"ble Court the plaintiff is not entitled to the reliefs claimed as (a) or is found entitled to any reliefs other than the relief

(a) or any alternative relief, in that condition, the Hon"ble Court may grant such relief or reliefs to the plaintiff against the defendant, which the

Court may find it proper and justified in law in the interest of the plaintiff.

(c) the plaintiff be awarded cost of the suit from the defendants.

22. The plaint dated 11.7.2006 valued in para 33 at Rs. 30 lacs for movable and immovable property of Sahaspur Bilari Estate was filed on

payment of Rs. 5000/- as Court fees u/s 7(4-b) of the U.P. Court Fees Act, 1870, on prayer (a), and is based upon the facts and grounds namely

that plaintiff Raja Chandra Vijay Singh born on 18.12.1950 is male descendant of Raja Kishan Kumar Ji, the owner of Sahaspur Bilari Estate. He

was awarded the title of "Raja" by notification issued by the Government on 26th June, 2008. The title of "Raja" in the family is hereditary. Raja

Jagat Kumar Ji was the grand son of Raja Kishan Kumar Ji. He had given an application u/s 3 of the U.P. State Act, 1920 on 23.1.1933, to apply

the provisions of Section 9 and Schedule 1 of the Act to the Sahaspur Bilari State and that provisions thereafter vide notification issued under

Sections 6 and 7 of the Act were made applicable to the property of Sahaspur Bilari State w.e.f. 16.2.1934 and are continuously applicable. The

plaintiff gets the hereditary right as first male descendant to the estate under the customary rule of primogeniture. Raja Jagat Kumar Ji died in a

motor accident on 7/8th March, 1938 leaving behind his Senior Rani Smt. Preetam Kunwar and Junior Rani Smt. Jaidei Kunwar and one daughter

Smt. Indra Mohini Ji. Smt. Jaidei Kunwar, the second wife of Raja Jagat Kumar Ji filed a suit No. 65 of 1953 against Smt. Preetam Kunwar,

Jagjeet Kumar, Rajkumari Laxmi Devi, Smt. Indra Mohini, Shri Jai Narain Sareen, President of Court of Ward, Sahaspur Bilari Estate, Collector,

Moradabad and Special Manager Court of Ward for declaration and partition. The suit was decided on 22.1.1962 with the findings that Smt.

Indra Mohini-defendant No. 4 was the only issue of Raja Jagat Kumar, who had left the properties, which yielded an income of more than Rs.

20,000/- per annum and looking to the fact, that the eldest child born of this marriage was to inherit the whole estate and to be real owner in

absence of the widows, will be full and absolute owner of all the property after the two widows and his mother, whatever view be taken with

respect to settled part of the estate. The regular First Appeal Nos. 101, 106, 110, 127 and 132 of 1962 were filed against the judgment and

decree in the High Court, which were decided by the Division Bench of the High Court on 9th November, 1965 holding therein that U.P. State

Act of 1920 is applicable to Sahaspur Bilari Estate and according to rule of primogeniture the estate will be inherited by only male heir. Smt.

Preetam Kunwar, the maternal grand mother of the plaintiff was managing the properties of all the estate. After the death of Smt. Preetam Kunwar,

Smt. Indra Mohini Ji, the mother of the plaintiff was maintaining the estate and thereafter the plaintiff is the only owner and person entitled to the

properties under the U.P. State Act of 1920.

23. It is further states in the plaint from the paragraph 18 onwards that the maternal grand mother and mother of the plaintiff were not owner and

entitled to the properties according to law. The plaintiff's birth was celebrated as an important festival as the only heir of the estate. He was given

separate annuity as the only male heir to the estate by the Court of Wards. Smt. Indra Mohini Ji died on 26.9.2005, and the plaintiff performed all

the religious rites on her death.

24. In para 22 of the plaint it is stated that after the death of Smt. Indra Mohini Ji, Smt. Reena Kumari-defendant No. 1 started expressing that she

is the only owner of the estate and that the plaintiff has no concern with it. In para 23 and 24 it is stated that Smt. Indra Mohini Ji, the mother of the

plaintiff did not execute any will on 15th November, 1984, or thereafter nor the question of executing any such will arose. In para 24 it is stated

that if the defendant No. 1 proves the execution of any such will of Smt. Indra Mohini Ji, which is clearly denied by the plaintiff, the will is liable to

be cancelled or is not binding upon the Sahaspur Bilari State for the reasons that the plaintiff is the only heir, owner and occupier of the Sahaspur

Bilari State as the eldest son in accordance with the customs prevalent and u/s 9 of the U.P. State Act, 1920, Schedule 1. If Smt. Reena Kumari

establishes, which is not accepted to the plaintiff that Smt. Indra Mohini Ji had signed on the alleged will on 15.11.1984, the said signatures have

been obtained by the defendants on account of her own relations by exercising undue influence, coercion and misrepresentation. Smt. Indra Mohini

Ji did not sign and execute the alleged will dated 15th November, 1984 voluntarily. The relations between the plaintiff and his wife with his mother

Smt. Indra Mohini Ji were cordial and thus it is impossible that his mother Smt. Indra Mohini Ji would execute the will in favour of the defendant

No. 1, when the plaintiff, his wife and his children were there. It is alleged by defendant No. 1 Smt. Reena Kumari that the alleged will dated

15.11.1984 by Smt. Indra Mohini Ji has been kept in sealed envelope in the office of the Registrar, Lucknow. The plaintiff is the son of Smt. Indra

Mohini Ji and was not given information about the opening of the sealed envelope and its registration creating a doubt that the real will of Smt.

Indra Mohini Ji was got registered. The plaintiff has further stated in the plaint that if for any reason the will dated 15.11.1984 is treated to be

executed in accordance with law, it is clearly denied to the plaintiff, the will can at best be made effective to the extent of the personal property of

Smt. Indra Mohini.

25. Shri Ajeet Kumar submits that Original Suit No. 505 of 2006 is a title suit in which the questions of the right of Smt. Indra Mohini to execute

the will as well as its execution and transfer of the properties of the estate of Sahaspur Bilari and the personal properties through the alleged will are

involved. The present suit is subsequent suit for grant of letters of administration. He submits that the jurisdiction to grant of probate is a

discretionary jurisdiction. Since the plaintiff Smt. Reena Kumari has not disclosed the fact of filing of the suit and had concealed it from the Court,

she cannot be allowed to pursue with the suit for grant of letters of administration.

26. Shri Ajeet Kumar submits that the probate Court cannot decide title. The suit includes all the properties even beyond the will and thus the

conflicting judgments should be avoided. The Civil Court has wider power and should be allowed to decide the suit.

27. Shri Navin Sinha, learned Counsel for the plaintiff in the testamentary suit submits that the judgment of testamentary court is judgment in rem.

The testamentary court has exclusive jurisdiction to decide the validity of the will. The suit for injunction filed by the caveator defendant is a suit

only for relief of injunction. It is not a title or declaratory suit nor any such reliefs have been claimed. If Section 10 of CPC does not apply, Section

151 has no application at all.

28. Shri Sinha submits that the application for letters of administration is to be given on a format provided under Chapter XXX of the Rules of the

Court. It was not necessary for the plaintiff to have disclosed filing of the suit by the caveator-defendant for injunction. The testamentary suit does

not include all the properties. He submits that the Civil Judge (SD) at Moradabad does not have jurisdiction to grant letters of administration and

that the matter in issue in both the suits are not directly or substantially the same.

29. Shri Navin Sinha would submit that where the decision in the probate proceedings on questions of proof of will has direct impact on a related

suit, such suit should be transferred to the probate court and should be disposed of along with probate proceedings vide *Nirmala Devi v. Arun*

Kumar Gupta and Ors. (2005) 12 SCC 505.

30. In *Balbir Singh Wasu v. Lakhbir Singh and Ors. (2005) 12 SCC 503* a similar situation arose in which the civil suit challenging the execution of

the will was filed prior to the filing of the probate proceedings. The Supreme Court found that the civil judge before whom the suit for declaration

and injunction was filed would not have jurisdiction to entertain the probate proceedings, and thus the principles underlying Section 10 of CPC

would apply because any decision of the civil suit would not-suit the respondent in the probate proceedings and issues in the civil suit would

overlap the issues, which may be raised in the probate proceedings. It was held that since a decision in the civil suit will not conclude the probate

proceedings, and the question whether probate should be granted or not would still be left to be determined by the High Court, there could be no

doubt that decision of the High Court would be relevant on the proceedings of the civil court. It was thus proper that the civil suit should be

clubbed and heard together by the District Judge, who would be competent to hear and dispose of both the suits and probate proceedings.

31. Shri Navin Sinha also supports his arguments from the decision of *Amar Deep Singh Vs. The State and Others*, and decision of Madhya

Pradesh High Court in *Ram Shankar v. Balak Das AIR 1992 MP 224* in which it was held that once probate court is considering the petition for

grant of probate, that court alone (probate court) is competent to decide the question of execution or validity of the will. In such situation it is not

open to the civil court to go into that question.

32. In *Chiranjilal Shrilal Goenka (Deceased) through Lrs. Vs. Jasjit Singh and Others*, the Supreme Court in a situation where the probate court

was examining the validity of the will, and the Arbitrator appointed by the Supreme Court had framed issues with regard to validity and

genuineness of the will, held that Arbitrator cannot proceed with the probate suit or to decide the dispute on issue Nos. 1 and 2 framed by him

regarding validity and genuineness of the will. The only course open is that the High Court be requested to proceed with the probate suit and till

then Arbitrator be requested not to decide those issues. In this case the Supreme Court reiterated the scope of jurisdiction of the probate court in

para 15 and in which reliance was placed upon *Ishwardeo Narain Singh Vs. Sm. Kamta Devi and Others*, that the probate court is only concerned

with the question as to whether the document would put forward as the last will and testament of the deceased person was duly executed and

attested in accordance with law and whether at the time of such execution the testator had sound disposing mind. The question whether particular

bequest is good or bad is not within the purview of the probate court. The Succession Act is a self contained Code for grant or refusal or probate

or an appeal against the order. The only issue in the probate proceedings relates to the genuineness and due execution of the will, and that the court

itself is under duty to determine it and preserve the original will in its custody. The proceedings are to be conducted in the manner prescribed in the

Succession Act and in no other way. The grant of probate with a copy of the will annexed establishes conclusively as to the appointment of

executor and the valid execution of the will. It does no more than establish the factum of the will and the legal character. The probate court does

not decide any question of title or of the existence of the property itself. The probate operates upon the whole estate and establishes the will form

the death of the testator. It is conclusive evidence not only of the execution but also of the validity of the will. After the probate has been granted, it

is incumbent on a person, who wants to have the will declared null and void to have probate revoked before proceedings further.

33. In this testamentary suit the Court in proceedings u/s 272 read with 278 and 300 of the Indian Succession Act and Chapter XXX Rule 6 and 7

of the Allahabad High Court Rules is concerned only with the genuineness and due execution of the will. The Court does not possess nor can

propose to decide any question of title, or the existence and the nature of the property. The judgment of this Court with regard to factum of the will

and its legal character is judgment in rem and will not only bind all the parties but also all other persons in the proceedings arising out of will or

claims under or connected therewith. If the letter of administration is granted, it will be conclusive of the execution and validity of the will, until it is

revoked and no evidence will be admitted against it.

34. On the aforesaid discussion I hold that suit for injunction in which the question of genuineness- due execution and legal character of the will

may also be involved, does not create any legal bar on the maintainability of the present proceedings. The filing of the suit claiming injunction alone

on whatever grounds, it has been claimed to the properties by the caveator-defendant, is not a ground on which this Court may either hold that the

testamentary suit is not maintainable, or to stay the proceedings.

35. The issue No. 4 is decided accordingly.