

Rajan Ranjan (hereafter 'Rajan'), died at Pune in January 2002. He was a Hindu. He is survived by his wife Kusum, mother Sunanda, two married sons Amit and Sumit, and an unmarried daughter Lakshmi (married in 2006). His properties (valued in multiple crore rupees) are given below.

1. A bungalow of 2500 sq ft and garden at Pune where he resided with all above family except Amit who lived in Bangalore with his own family
2. Four flats in the best localities in the heart of Nagpur, occupied by licencees
3. A palatial house at a hill-station Navaapur near Pune (hereafter 'Navaapur-house'), which he used as a holiday home, and let out as a holiday home, or to film-producers for shooting films, or to organisations and corporate houses for activities and meetings
4. Shares in companies
5. Deposits in Banks
6. Investments in various Funds
7. Gold jewellery and items
8. Silver articles
9. Articles in his house
10. Promissory notes of substantial amounts issued by various persons around the globe.
11. Other properties

Rajan studied at Kolhapur in school till the 6th standard, and then shifted to Pune. Having no interest in education, he started at 18 a paan shop outside a reputed hotel, and built substantial assets later from its income. Gradually he started the business of money lending, but never took a money-lender's licence. He obtained two licensed arms from time to time for his own protection. His clout grew in the area, and his activities drew police attention. He often had externment orders passed against him. In 1990s he was detained under the anti-terrorism law. He had many similar proceedings against him from time to time, and his properties were seized. In 2002, at the time of his death, Rajan had three proceedings pending against him under anti-terrorism laws, but all seizure orders against properties stood stayed. All these proceedings abated soon after his death.

In the first half of 1999 he stayed at Bangalore with his son Amit. He required treatment for peptic ulcer, which had been troubling him for more than two years. He was in and out of hospitals for treatment. Amit and his family looked after him and the treatment. Rajan's family remained in Pune.

On 24 March 1999, Rajan was admitted into the ICU of a hospital at Bangalore. He instructed Amit to make his will and gave him directions in Marathi, his mother-tongue. The will itself of five pages was typed in English. The next day Rajan put his signature (a scrawl) on the last page and also put his thumb impression. Sashidhar (Amit's friend) and Atishkumar (Amit's neighbour) signed as witnesses in the hospital.

After narrating in general terms Rajan's education, rise in business, and his happy family life, the will states as follows:

"I am now admitted in hospital and do not know how long I will live. I kept postponing the making of a will until now. This is my last will. I sincerely hope my family will accept it. My family members shall not challenge it.

I give my properties after my death as follows:

1. My bungalow at Pune I give in equal shares to my two sons. My wife and mother shall have a right to reside in it during their lifetime. My daughter shall have a right to reside in it till she is married. My sons may sell it at any time, but only after providing adequate residence elsewhere to my wife, mother and daughter (till she is married), and they shall pay one-third of the price to my wife.
2. All my three flats (of 350 sq. m. each) in the building 'Ajinkya' near Orange Drive, Nagpur, I give to my son Amit. My fourth flat (of 450 sq.m.) in the building 'Gulistan' at M G Road, Nagpur, I give to my son Sumit.

3. My gold jewellery and items I give equally to my wife, two daughters-in-law and my daughter. All silverware I give equally to my two sons.
4. All the articles and things lying in my house I give to my wife and my son Sumit.
5. All my shares, debentures, investments in various companies, funds and organisations and all amounts lying with banks, debtors or institutions I give to my son Amit. He shall pay every month Rs 15000 each to my wife, my mother and my daughter (till she is married) out of the income of these.
6. My house and gardens at Navaapur I give by this will to my childhood friend Sameera. We spent wonderful days during childhood, until I shifted to Pune. She now lives in Chennai, is happily married, is an acclaimed Hindustani classical music artiste. I have followed her career with keen interest. I wish her well in life.
7. All that remains, movable or immovable, I give to my son Amit.
8. I appoint Amit as executor of this will. ”

After Rajan's death Amit applied in Pune for a succession certificate. He cited the names of all relatives and of Sameera. Sameera did not appear in the proceeding. Kusum, Sunanda, Sumit and Lakshmi (hereafter together referred as 'Kusum and others') appeared in the proceeding and challenged the will. The Court issued succession certificate to Amit in 2004. Without deciding the validity of the will, the Court observed: "... even assuming the will were invalid, succession certificate could be issued to Amit."

The will of Rajan, the contest, and the bequest to Sameera was discussed in the media.

On Sameera's request, Amit sent her a copy of the will. Amit also informed her that as executor of the will, he had commenced proceedings for recording her name on the revenue record of the Navaapur-house. Sameera immediately responded and sent letters to Amit and all other relatives stating that the bequest caused her considerable embarrassment, that she disclaimed the Navaapur-house given to her by the will and that she did not wish to be associated with the Navaapur-house.

Sameera filed a suit in the Civil Court at Pune in September 2002 *inter alia* for a declaration that she was not owner of the Navaapur-house.

Amit has contended in his written statement that: (i) the will is valid, (ii) Sameera cannot disclaim under the law and is entitled to the Navaapur-house; and by way of counter-claim that: (iii) if the Court accepts her 'disclaimer', he is entitled to the Navaapur-house under the residuary clause, and (iv) in any case to 1/5th share in the Navaapur-house.

Kusum and others challenged the will and counter-claimed that: (i) the will is invalid; (ii) declaration of 1/5th share of each of them in all properties of Rajan, in any case in the Navaapur house, and (iii) actual partition of their respective shares in Rajan's properties.

Sameera did not file any counter-written statement. Amit filed a written-statement responding to counter-claim of Kusum and others. Kusum and others filed written-statement responding to Amit's counter-claim, and the court has ordered that it will decide the maintainability of these written statements along with all issues.

The court has also kept a preliminary issue for judgment: Whether or not Kusum's counterclaim be decided as a separate suit ?

The Court allowed all parties to lead evidence on all issues. The following facts emerged during trial.

Sameera stated in her oral evidence that no-one could impose any property upon her against her wishes. She did not want the Navaapur-house, that she had not met Rajan after he left for Pune, nor had heard from him. The will, and its publicity, had caused her considerable embarrassment.

Amit stated in his oral evidence that his father's condition in hospital was very critical, and his father insisted that he wanted to make the will. He took down the instructions of his father in Marathi (which he filed in the proceedings), and prepared the draft in English. Since his father's condition was critical, and he could not find a Marathi typist in Bangalore, he dictated the will in English to a typist and got it typed. Being short of time, he managed to get his friend and his neighbour as witnesses.

Amit made only two copies of the will, which remained with him throughout till Rajan died. Rajan never asked for the copies of the will. Rajan's doctor, who was Amit's friend, was present when Rajan signed the will. He had not known about Sameera till his father told about her while dictating the will in Marathi. He had never met Sameera before Rajan's death.

Sashidhar stated in his oral evidence that Amit called him to hospital to be a witness to his father's will. When Sashidhar reached Rajan's room, Rajan had the will on his lap. A doctor and Atishkumar were also present. Amit told Rajan that two witnesses had arrived. Rajan attempted to sign on the last page of the will, but his hand and pen slipped off. Amit asked Rajan whether he would put his thumb impression. Rajan consented. Amit took a stamp pad from his pocket, took hold of Rajan's left hand, pressed Rajan's thumb on the pad, and holding Rajan's hand, pressed the thumb on the last page of the will. Sashidhar and Atishkumar did not ask Rajan any questions. They signed as witnesses. Rajan waved at them, but did not say anything. The doctor put his certificate. The doctor then requested Sashidhar and Atishkumar to leave because Rajan was tired.

Kusum stated that she did not know about the will. Rajan or Amit never told her about it till after Rajan's death. Whenever she asked Rajan about the properties, he kept telling her that her interests will be protected. She knew that Rajan and Sameera were neighbours and hence knew each other, but she had never met Sameera. Her married life with Rajan could be described as happy.

The doctor was not examined. Ajit applied for a summons to call him, which returned with a remark that the doctor did not stay at the address stated in the summons. Ajit did not take any further steps to locate the doctor.

The trial court decided as follows:

- (1) The issue of validity of will can be appropriately decided in Sameera's suit itself to prevent multiplicity of proceedings
- (2) The will is valid.
- (3) Sameera's suit is decreed on the principle that ownership cannot be thrust on a person without his consent.
- (4) Amit's counter-claim is decreed. Amit is entitled to all properties given to him under the will, and to the Navaapur house as residuary legatee.
- (5) Counter-claim of Kusum and others is dismissed.

Kusum and others filed appeal from the judgment and decree of the trial court. Sameera has not appeared in the appeal. The appeal has been admitted in the High Court, and is fixed for final hearing. Argue on behalf of Appellant - Kusum and others, and Respondent - Amit.

The will is a fair translation of notes taken by Amit in Marathi. The above facts, and the will and Marathi notes, are either admitted or sufficiently proved. There are no other facts.

This problem is formulated by Nilima Bhadbhade, ILS Law College, Pune. Anyone may use it for non-commercial educational purposes, provided the author is acknowledged. The events narrated are imaginary. The author also refers readers of this case to another case based on same facts, but argued at trial. Its title is *Sameera v Ajit, Kusum*.

Pune and Nagpur are in Maharashtra State, and natives of Pune will speak the Marathi language. Bangalore is in Karnataka state, and natives of Bangalore will speak Kannada language. One lakh = 100,000. One crore = 10,000,000.

Facts are located in Pune, Maharashtra State, India. The case will involve provisions of the Indian Succession Act 1925, the Transfer of Property Act 1882, the Hindu Succession Act 1956, the Indian Evidence Act 1872 and the Code of Civil Procedure 1908.