

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

**TESTAMENTARY SUIT NO.3 OF 1998
IN
TESTAMENTARY PETITION NO.531 OF 1995**

Joseph G. D'souza and Anr.Plaintiffs

Vs.

Neri Murzello and Anr.Defendants

**WITH
TESTAMENTARY SUIT NO.4 OF 1998
IN
TESTAMENTARY PETITION NO.532 OF 1995**

Joseph G. D'souza and Anr.Plaintiffs

Vs.

Nen. Murzello and Anr.Defendants

Mr. Denzil D'mello for the plaintiffs in both suits.

Mr. VY. Sanglikar for the defendants in both suits.

CORAM : K.R.SHRIRAM, J.

DATE : 20th JANUARY, 2017

P.C.:

TESTAMENTARY SUIT NO.3 OF 1998

1 Mr. Sanglikar, counsel for the defendants states that they have already filed their evidence and no compilation of documents is being filed.

2 The defendants' first witness – Anthony @ Tony Murzello (DW-1) is present in court and is administered oath. On oath DW-1 confirms having sworn an affidavit dated 13th January, 2015 and also identifies his signature. The same is taken on record and marked **Exhibit D-1/1.**

3 The counsel for the opposing parties request that the Commissioner who was appointed earlier be continued. The Commissioner – Mr. R.K. Desai, who has been appointed earlier shall continue to be the Commissioner under the same terms and conditions in which he was appointed and the cost of the Commissioner will be costs in the suit.

4 The Commissioner to endeavor to complete recording of evidence of DW-1 by 15th March, 2017. The Commissioner to fix minimum two/three dates per session for cross examination of DW-1. If the parties do not respond promptly within 48 hours of receiving a communication from the Commissioner suggesting the subsequent dates, the Commissioner to go ahead and fix the dates convenient to him and the parties shall make themselves available at the time and dates fixed by the Commissioner. If the defendants or the witness do not remain present, the Commissioner should close the evidence of DW-1 as not made available for cross and if the plaintiffs do not remain present to cross examine the witness, the plaintiffs' cross examination should be treated closed as no cross. Once the dates are fixed, the Commissioner not to grant adjournment on any ground whatsoever unless the situation is so grave that it warrants an adjournment and for reasons recorded. Liberty to apply.

(K.R. SHRIRAM, J.)