

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

**TESTAMENTARY SUIT NO.4 OF 1998
IN
TESTAMENTARY PETITION NO.532 OF 1995
WITH
TESTAMENTARY SUIT NO.3 OF 1998
IN
TESTAMENTARY PETITION NO.531 OF 1995**

Joseph G. D'souza and Anr.Plaintiffs

V/s.

N. Murzello and Anr.Defendants

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

Ms. N.V. Sanglikar for the defendants in both suits.

CORAM : K.R.SHRIRAM,J

DATE : 9th JANUARY, 2017

P.C.:-

TESTAMENTARY SUIT NO.4 OF 1998

1 The plaintiffs' second witness - Rose Marie D'souza (PW-2) is present in court and is administered oath. On oath PW-2 confirms having sworn an affidavit dated 2nd April, 2016 in lieu of examination in chief and also identifies her signature. The same is taken on record and marked **Exhibit P-2/1**. Alongwith Exhibit P-2/1, PW-2 has also filed a compilation of 02 documents.

2 The serial numbers given below relate to the index to the compilation of documents :-

Serial No.1 – **Exhibit P-2/2**

Serial No.2 – **Exhibit P-2/3** subject to cross examination.

3 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 Mr. D'mello, counsel for the plaintiffs states that PW-2 is 81 years old and lives on the 3rd floor of a building which does not have a lift. Mr. D'mello further states that the witness is finding difficulty climbing stairs and requests if the evidence of PW-2 be recorded at the residence of PW-2. Mr. D'mello assures that all the facilities for all the lawyers and parties and the Commissioner and Stenographer to sit and record evidence will be arranged at the residence of PW-2.

In view of the above, the evidence of PW-2 to be recorded at the residence of PW-2.

5 If the parties require the record and proceedings to be produced at the venue of cross-examination, the Registry to do the needful as per the usual terms and conditions.

6 The Commissioner to endeavor to complete recording of evidence of PW-2 by 28th February, 2017. The Commissioner to fix minimum two/three dates per session for cross examination of PW-2. 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 plaintiffs or the witness do not remain present, the Commissioner should close the evidence of PW-2 and if the defendants do not remain present to cross examine the witness, the defendants' 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)