

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

ORDINARY ORIGINAL CIVIL JURISDICTION

TESTAMENTARY SUIT NO.7 OF 1997

IN

TESTAMENTARY PETITION NO.444 OF 1996

G. L. Sahani & Anr

... Plaintiff

V/s.

Gulab M. Makhijani

... Defendant

Ms Prachi K. i/b M/s M.P.Vashi for the plaintiff

Ms R. C. Nichani for Defendant No.1.

CORAM : R.D.DHANUKA J.

DATED : JANUARY 21, 2014.

P.C.

The grievance of the learned counsel appearing for the plaintiff is that in spite of the order passed by this Court, defendant No.2 is not making any contribution for payment of expenses and fees of the Court Commissioner though first defendant has contributed 1/4th share and the remaining 1/2 is made by the plaintiff.

2. Defendant No.2 is directed to contribute 1/4 share of the expenses and fees of the Court Receiver henceforth and also shall clear the arrears if any within two weeks from today.

3. Learned counsel appearing for parties at this stage invited my attention to the fact that two of the documents referred to and relied upon by

the first defendant in examination-in-chief are not yet marked as exhibits by this Court.

4. Ms Nichani, learned counsel appearing for the first defendant invited my attention to the copy of notes of evidence recorded by the learned Court Commissioner in the meeting held on 20/09/2013 and would submit that since documents which are compiled as document No.1 contains medical records of the deceased, in view of the plaintiff having cross examined the witness of the first defendant, those documents are required to be marked as exhibits.

5. On perusal of the copy of notes of evidence and cross examination of the first defendant by the plaintiff, it is clear that the first defendant has asked various questions on the documents annexed as document No.1 and thus those documents will have to be marked in exhibits. Documents which are annexed as document No.1 are thus marked as **Exhibit-D-1(A colly)**.

6. In so far as lease deed dated 15/04/1989 which is second document relied upon and is forming part of list of documents is concerned, learned counsel appearing for the plaintiff fairly admits that the witness examined by the plaintiff has admitted the execution of the said lease deed. In view of the plaintiff admitting the execution of the lease deed dated 15/04/1989, lease deed is also marked as **Exhibit-D-1(B)**. Parties are directed to proceed with recording of evidence before the Court commissioner.

(R.D.DHANUKA, J.)