

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY & INTESTATE JURISDICTION

TESTAMENTARY SUIT NO. 23 OF 1997
IN
TESTAMENTARY PETITION NO. 381 OF 1996

Smt. Yona Pinto. ...Plaintiff
Versus
Mr. Keith Pinto ...Respondent

Mr. Abhijeet Marathe, Advocate for Plaintiff.

Mr. Denzil D'Mello, Advocate for Defendant No.1.

CORAM : N. J. JAMADAR, J.
DATE : 29th JULY 2024.

PC.:

1. Mr. Keith Ivan Pinto, the witness for the Defendant is present before the Court in terms of the order dated 19th June 2024.
2. In the Order dated 3rd July 2017 this Court had granted liberty to the Defendant to examine this witness further, after the documents are marked by the Court.
3. The learned Counsel for the parties now agree that the aspect of the marking of the documents can be considered on the basis of the affidavit in lieu of the Examination-in-Chief filed by Mr. Keith Ivan Pinto and the original documents which have been tendered on behalf of the defendants.

4. Statement of admission and denial of the documents is filed on behalf of the Plaintiff.

5. The witness for the Defendant Mr. Keith Ivan Pinto is present in the Court and is administered oath, so as to complete recording of further examination-in-chief.

On S.A.

Name : Mr. Keith Ivan Pinto.

Age : 60 Years.

Occupation : Musician.

Address : 469, Cottarbhat, Aldona Bardez, Goa-403508.

Further Examination-in-Chief of DW-1 on S. A. by Mr. Denzil D'Mello, Advocate for the Defendant:

The Affidavit in lieu of examination-in-chief is now shown to me. It is affirmed by me. It bears my signature. The contents of the affidavit are true and correct. The affidavit is marked as Exhibit-D-1/1.

P.C. :

1. The documents at Serial Nos. 1 and 15 are admitted in evidence. The document at Serial No. 1 being certified copy of Decree Nisi for Dissolution of Marriage dated 5th July 1989 is marked as **Exh. D-1/2**. The document at Serial No. 15 being Marriage Certificate of the Plaintiff Cassino Santana Fernandez is marked as **Exh. D-1/3**.

2. Documents at Serial No. 2 are two passports bearing Passport No. A071970 and No. F0256189. (Learned Counsel for the Plaintiff submits that the two passport at Serial No. 2 may be marked.) Two passports bearing Passport No. A071970 and No. F0256189 are marked as **Exh. D-1/4** and **Exh. D-1/5** respectively.

3. The document at Serial No. 3 being the original ration card Bearing BB No. 0345997 is marked as **Exh. D-1/6** (In view of the averments in paragraph 14(b) of the Affidavit in lieu of the Examination-in-Chief).

4. The document at Serial No. 4 being the original Ration Card bearing SB No. 0047665 is marked as **Exh. D-1/7**(In view of the averments in paragraph 14(c) of the Affidavit in lieu of the Examination-in-Chief).

5. The document at Serial No. 5 being the Driving Licence bearing No. MH02/92/8218 is marked as **Exh. D-1/8** (In view of the averments in paragraph 14(d) of the Affidavit in lieu of the Examination-in-Chief).

6. The documents at Serial No. 6 are a photo copy of the surrendered Insurance Policy and Renewal Premium Receipt, issued by LIC. The documents at Serial No. 6 are collectively marked as **Exh. X-1** for identification.

7. Documents at Serial No. 7 are the original passbooks of Citizen Co-op Bank Ltd. The documents at Serial No. 7 are marked as **Exh. X-2** collectively for identification. (The Defendant is at liberty to place the extract of the account certified under Banker's Book Evidence Act.)

8. The document at Serial No. 8 is the original Term Deposit Receipt being Receipt No. 679324 in Account No. 306679324-R02. The document is

marked as **Exh. D-1/9** (In view of the averments in paragraph 14(g) of the Affidavit in lieu of the Examination-in-Chief).

9. The documents at Serial No. 9 are the Share Certificates of Modistone Limited, being Share Certificate No. 0074689 and Share Certificate No. 0074790, alongwith covering letter dated 18/07/1995. The documents at Serial No. 9 are marked as **Exh. D-1/10** collectively (In view of the averments in paragraph 14(h) of the Affidavit in lieu of the Examination-in-Chief).

10. The documents at Serial No. 10 are the Share Certificates of Indo Swiss Time Limited, being Share Certificate No. 59250, Share Certificate No. 59251 and Share Certificate No. 59252, and Letter dated 15/04/1995. The documents at Serial No. 10 are marked as **Exh. D-1/11** collectively (In view of the averments in paragraph 14(i) of the Affidavit in lieu of the Examination-in-Chief).

11. The documents at Serial No. 11 are Eight Receipts issued by Mafatlal Securities Ltd. The documents at Serial No. 11 are marked as **Exh. D-1/12** collectively (In view of the averments in paragraph 14(j) of the Affidavit in lieu of the Examination-in-Chief).

12. The document at Serial No. 12 is a Newsletter for September 2002 of Broadcast Bulletin of India. The document at Serial No. 12 is marked as **Exh. X-3** for identification.

13. The document at Serial No. 13, being Annual report for the year 2001-02 of DMC Vaults Limited, is marked as **Exh. X-4** for identification.

14. The document at Serial No. 14 being 27th Annual Report for the 2008-09 of Khandelwal Extractions Limited is marked as **Exh. X-5** for identification.

15. The learned Counsel for the Defendant submits that the Defendant does not press for marking of the documents at Serial Nos. 16 to 21.

16. Further examination-in-chief of the Defendant's witness is complete. Cross-examination be recorded on commission.

17. By consent, Mrs. Savita Ganoo (Office No. 19, 1st floor, Rohit Chambers, Janmabhumi Marg, Fort, Mumbai 400001, Cell No. 9820450243, Email : Savitasadananda@gmail.com) is appointed as a Court Commissioner and is requested to record the cross-examination of the Defendant's first witness.

- (a) The Commissioner is at liberty to exercise discretion under Order XVIII rule 4(4) of the Code of Civil Procedure, 1908, to note the demeanour of the witnesses where necessary.
- (b) All cross-examination shall be conducted strictly in question and answer form.
- (c) The Commissioner will also be at liberty to direct that the whole or any part of the cross-examination should be video recorded for later reference of the Court. Should that be done, the original audio visual recording will be submitted along with the Commissioner's Report to the Registry.
- (d) Liberty to the parties as also to the Commissioner to apply in case of difficulty.

- (e) All re-examination will be conducted only in Court.
- (f) Costs of the commission shall be borne equally by the parties.
- (g) Parties shall also pay costs of Rs.500/- per hearing to the Court Clerk who attends the Commission with Court Papers. This is required since these clerks attend the commission in addition to their duties and outside their normal working hours.
- (h) The Commissioner is not to permit any application for adjournment on dates previously fixed, except where absolutely unavoidable. Counsel's inconvenience or unavailability does not constitute such unavailability.

18. List the matter on 23rd September, 2024 for a status report including as to progress before the Commissioner.

[N. J. JAMADAR, J.]

ARUNA
SANDEEP
TALWALKAR

Digitally signed by
ARUNA SANDEEP
TALWALKAR
Date: 2024.08.01
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