

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

TESTAMENTARY SUIT NO. 5 OF 2005

IN

TESTAMENTARY PETITION NO. 226 OF 2004

Cecilia Remynold Dsouza & Ors.

.. Plaintiffs

Versus

Mrs. Rubey Cyril D'sourza & Ors.

.. Defendants

Adv. Lizum Wangdi i/b Adv. Vinayak Phadke for Plaintiffs.

Adv. Mutahar Khan a/w Adv. Namita Mestry and Adv. Prapti Karkera
for Defendants.

CORAM: FIRDOSH P. POONIWALLA, J.

DATE: SEPTEMBER 10, 2025

P. C.

1. Today the matter is placed for deciding on the objections raised by the parties during the course of cross examination of the witnesses.

2. The first objection is raised in respect of Question No. 30 of the cross-examination of PW-1 wherein the witness has been asked to produce proof that the house at Uttan belongs solely to her father-in-law. The objection is on the ground that the cross examiner is attempting to delve into the title of the properties listed in the Will. I am unable to accept the said objection. Question No.30 arises directly from Question No.29 wherein the witness has confirmed that she has proof that the house belongs solely to her father-in-law. In addition, the said property is mentioned in the Will. The

question, whether the said property is owned by the father-in-law of the witness will be relevant in deciding the issue as to the validity of the Will. Hence the objection is over ruled.

3. Next Objection is raised to Question No. 35 of the cross examination of PW-1. Question No. 35 is just a suggestion to the witness and therefore there is no merit in the said objection. The suggestion can definitely be allowed and it is permissible to put the same to the witness. Therefore the objection to Question No. 35 is over ruled. As far as the objection to Question No. 39 of the cross-examination of PW-1 is concerned, the same is over ruled for the reasons given by me whilst deciding the objection to Question No.30.

4. The objection to Question No. 67 of the cross-examination of PW-1 is also over ruled. Question No.67 only asks the witness, whether the witness is in a position to produce any of the documents in a week's time. The objection is on the ground that the line of questioning is repetitive and tantamounts to badgering of the witness. In my view the same is incorrect. Hence the objection is over ruled.

5. As far as Question Nos. 69, 70 and 72 of the cross-examination of PW-1 are concerned, the same are questions on law to a witness on fact. The said questions are not permissible. Therefore the objections to these questions are sustained and the said questions and the answers thereto will not be read in evidence.

6. As far as Question Nos. 71 and 74 of the cross-examination of PW-1 are concerned, these are questions which are asked to the witness in respect of the contents of the Will, and, therefore, are permissible. Therefore, the objections to Question Nos. 71 and 74 are over ruled.

7. As far as the objection to Question No. 85 of the cross-examination of PW-1 is concerned, the same is over ruled. The objection is on the ground that the question is vague. In my view, the question and the answer given by the witness clearly show that the witness understood what was being asked to her.

8. As far as the objection to Question No. 92 of the cross-examination of PW-1 is concerned, the witness is merely asked about the survey numbers of the properties mentioned in the alleged Will. In the context of the suit, the said question is relevant and therefore the objection is over ruled. In my view, the grounds on which the said objections are raised, namely, that the question is beyond the contentions raised in the Affidavit in support of the Caveat, beyond the scope of the issues framed by the Court, that it is a misleading question and legally untenable cannot be accepted. It is well settled in law that the cross examiner has much more latitude and cross-examination is not confined only to what is stated in the Affidavit in lieu of examination in chief.

9. As far as the objection to Question No.142 of the cross-examination of PW-1 is concerned, the same is over ruled. The witness is asked a factual question. The objection is on the ground that the question is misleading. However, in my view, there is nothing misleading about the question.

10. As far as the objection to Question No. 153 of the cross-examination of PW-1 is concerned, the same is sustained. The question asked to the witness is as to whether the lawyer informed her of something. As far as the conversation between the lawyer and client is concerned, the same is privileged. Therefore, this objection is sustained. Hence, the said Question No. 153 and the answer thereto will not be read in evidence.

11. As far as the objection to Question No. 160 of the cross-examination of PW-1 is concerned, the same is over ruled. In my view the question is a factual question and the relevancy thereof would be decided at the hearing of the suit.

12. As far as the objection to Question No. 112 of cross examination DW-1 is concerned, the learned Advocate appearing on behalf of the Defendant No.1 does not press the objection and hence this objection is over ruled.

13. Place the matter for directions on 22nd September, 2025.

[FIRDOSH P. POONIWALLA, J.]