

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Amk

TESTAMENTARY SUIT NO. 5 OF 1999
IN
TESTAMENTARY PETITION NO. 806 OF 1998

Pradeep Kumar Anand .. Plaintiff

Vs.

Dilip Kumar Anand .. Defendant

Mr. C. M. Korde, Sr. Counsel a/w Mr. M. G. Gawde for the Plaintiff.

Mr. Shailesh Shah a/w. Mr. Gautam Ankhad a/w. Ms. Shruti Maniyar i/b Solomon & Co. for the Defendant.

CORAM : **MRS. ROSHAN DALVI, J.**
Date : **30th JUNE, 2011.**

P.C.

1. Further affidavit of examination-in-chief of the Plaintiff is filed. The Plaintiff is not present in Court. The Plaintiff shall identify his signature on his affidavit before his cross-examination. Further documents relied upon by the Plaintiff are required to be considered upon the evidence of the Plaintiff in paragraphs 5 & 6 of the further affidavit of examination-in-chief. The initials as well as the signature of the deceased on all the pages of the Leave and Licence agreement dated 9th August, 1995 as also in the receipts thereto are marked **Exhibit D** collectively. The initials and signature of the deceased in the Amenities Agreement also dated 9th August, 1995 and the receipts are marked **Exhibit E** colly. The initials and the signature of the deceased on the Agreement for Deposit dated 9th August, 1995 and the receipts are marked **Exhibit F** colly.

2. The Plaintiff applies for leave to file

certified copy of the bank statement of the deceased certified by the bankers under the Bankers Book Evidence Act. If the statement is so certified, it could be tendered across the bar as it would carry a presumption as to its correctness. It shall be marked exhibit.

3. The Plaintiff has inadvertently left out an aspect relating to the receipt of another cheque by the deceased along with two cheques already mentioned in the further affidavit. The Plaintiff shall be entitled to file still further affidavit in that behalf later before the Court Commissioner.

4. By consent, Mr. Farhan Dubhash is appointed Commissioner to record the cross-examination of the witnesses in this Suit. Parties shall appear before the Court Commissioner initially on 6th July, 2011 at 5 p.m. Parties shall pay the fees of the Commissioner as fixed by the Commissioner equally. The Commissioner shall record the evidence of the parties preferably day to day. The Plaintiff shall identify his signature on his affidavit as well as further affidavit to be filed later before the Court Commissioner prior to his cross-examination. The Plaintiff shall be cross-examined upon the documents marked as exhibits also upon the Statement of Account duly certified by the Bankers, if produced.

5. The Plaintiff has filed affidavit of examination-in-chief of three other witnesses also. Those are taken on record under the provisions of Order XVII Rule 4 of the Code of Civil Procedure. Those witnesses are also not present. Hence they shall identify their signatures on the affidavit before the

Court Commissioner.

6. After the entire evidence of the Plaintiff is complete, the Defendant shall file his affidavit of examination-in-chief, also by consent, directly before the Court Commissioner. If the Defendant relies upon any document, the Parties to place the Suit on board for considering the admissibility of the documents. If not, parties to proceed with the cross-examination of the Defendant before the Court Commissioner.

7. Parties to place the Suit on board at appropriate time.

(ROSHAN DALVI, J.)