

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

Amk

TESTAMENTARY SUIT NO. 12 OF 1999
IN
TESTAMENTARY PETITION NO. 1087 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. Affidavit of examination-in-chief of the Plaintiff is filed. The affidavit is accepted under the provisions of Order XVIII Rule 4 of the Code of Civil Procedure. However the Plaintiff is not present in Court. The Plaintiff shall identify his signature before his cross-examination is recorded.

2. Original documents relied upon by the Plaintiff are produced. The admissibility of the original documents is considered as follows :

1. Copy of the Will of the deceased which is kept in the safe custody of the Prothonotary and Senior Master of this Court is marked **Exhibit A** for the sake of convenience.
2. Original death certificate of the deceased is marked **Exhibit B**.

3. The previous Will of the deceased dated 08.08.1995 which is a registered document is marked **Exhibit C** subject to the proof of the truth of its contents.
4. Another previous Will of the deceased dated 05.05.1996 which is a certified copy issued by the Registrar of Assurances is marked **Exhibit D** subject to the proof of the truth of its contents.
5. By consent, the duplicate Will of the deceased, the original of which is sought to be probated in this Suit, is marked **Exhibit E** subject to its proof along with the original Will.
6. By consent, registered Conveyance dated 14th November, 1990 along with its plan is marked **Exhibit F**.
7. Copy letter dated 28th August, 1997 sent by the Defendant's Attorney to the trustees of Lala Harichand Anand & Smt. Inder Kaur Charitable Trust is marked **Exhibit G**.
8. 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 tendered further three affidavits of evidence. These are also taken on record under the provisions of Order XVIII Rule 4 of the Code of Civil Procedure. Those witnesses also shall identify their signatures before the cross-examination.

4. By consent, Mr. Farhan Dubhash is appointed Commissioner to record the cross-examination of the witnesses in this Suit. The Plaintiff shall be cross-examined upon the documents marked as exhibits as 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 accepted 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 their cross-examination is recorded.

6. After the cross-examination of the Plaintiff is recorded, the cross-examination of the other three witnesses of the Plaintiff shall be recorded by the Court Commissioner.

7. It is clarified that the evidence in this Suit is required to be recorded along with and soon after the evidence in Suit No. 5 of 1999 in Testamentary Petition No. 806 of 1998. The Plaintiff has led evidence in both the Suits. He is required to be cross-examined in both the Suits. It would be proper that the Plaintiff be cross-examined in the first Suit immediately followed by his cross-examination in this Suit after which the witnesses on behalf of the Plaintiff in both the Suits be cross-examined one by one.

8. After the entire evidence of the Plaintiff is complete, the Defendant shall file his affidavit of

examination-in-chief, by consent, directly before the Court Commissioner. If the Defendant relies upon any documents, 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.

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

(ROSHAN DALVI, J.)