

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION**

TESTAMENTARY SUIT NO. 24 OF 2023

IN

TESTAMENTARY PETITION NO. 2599 OF 2022

Sreekant Surajmal Mehta @
Srikant Surajmal Mehta @
Shreekant Surajmal Mehta @
Shrikant Surajmal Mehta

...Deceased

Nipun Navnit Mehta

...Plaintiff

Versus

Neeta Harshkant Mehta & Ors.

...Defendants

* * *

- Mr. Vivek Kantawala a/w Mr. Zain A.K. Najam-es-sani i/b Mr. Zain A.K. Najam-es-sani, for Plaintiff.
- Mr. Zain Mookhi a/w Mr. Arshil Shah, Ms. Smita Durve, Mr. Vishal Raman and Ms. Pratiksha Koshe i/b Arshil Shah, for Defendants.

* * *

CORAM : MANISH PITALE, J.

DATE : 28th MARCH, 2024.

P. C. :

1. The learned counsel for the parties invite attention of this Court to an order dated 07th March, 2024, passed by the Division Bench of this Court in an appeal arising from order dated 07th December, 2023, passed by this Court. By the order dated 07th December, 2023, while dismissing the application of the defendants for rejecting the plaint on the ground of want of jurisdiction, this Court had framed an additional issue with regard to the question of jurisdiction.

2. The Division Bench disposed of the appeal without

interfering with the order dated 07th December, 2023, passed by this Court. But while disposing of the appeal, the Division Bench directed that the issue of jurisdiction as framed shall be decided as a preliminary issue, with liberty to the parties to lead evidence in support of their rival contentions on the said issue.

3. It is relevant to note that the in the meanwhile, on 07th February, 2024, the affidavits in lieu of examination in chief of the two attesting witnesses i.e. P.W.1 and P.W.2 were taken on record and a Court Commissioner was appointed for cross-examination of the said witnesses. This Court marked two documents as Exhibit “P-1” and “P-2”.

4. But, in the light of the said order passed by the Division Bench of this Court, the issue of jurisdiction will have to be decided as a preliminary issue, with opportunity being granted to the parties to lead evidence. The learned counsel appearing for the plaintiff submits that an affidavit in lieu of evidence of the plaintiff as a witness for the said issue is ready along with a compilation of documents consisting of three documents. Copies of the same have been handed over today to the learned counsel appearing for the defendants.

5. Affidavit in lieu of examination in chief of the plaintiff dated 28th March, 2024, is taken on record. The compilation of

documents is also taken on record.

6. The learned counsel for the defendant seeks adjournment to take instructions on the question of admission and denial of the documents. It is submitted by the learned counsel for the plaintiff that since there are only three documents to be marked and the issue of jurisdiction is a short issue, this Court may consider cross-examination to be conducted in the Court itself.

7. In view of the above, adjourned to 24th April, 2024, to be taken up at 02.30 p.m., when this Court will proceed to mark the documents and the cross-examination of the plaintiff may also be undertaken on the said date.

8. The advocates representing the defendants are permitted to take inspection of the compilation of documents taken on record today.

(MANISH PITALE, J.)