

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 10 OF 2019
WITH
NOTICE OF MOTION NO. 13 OF 2019
WITH
INTERIM APPLICATION NO. 565 OF 2020
WITH
INTERIM APPLICATION NO. 566 OF 2020
WITH
INTERIM APPLICATION NO. 569 OF 2020
IN
TESTAMENTARY SUIT NO. 25 OF 2018
IN
TESTAMENTARY PETITION NO. 780 OF 2013**

Jangbahadur Singh Darshan Singh Gujral ... Plaintiff

vs.

Manmohan Kaur Oberoi and others ... Defendants/Caveators

Mr. Kunal Bhanage a/w. Mr. Vasim Siddiqui and Ms. Priyanka Acharya for plaintiff.

Mr. Kanchan Dhodi a/w. Mr. Gautam Tiwari and Ms. Tasneem Khatau, i/b. Probus Legal for defendant Nos.2 and 3A to 3C.

CORAM : MANISH PITALE, J.

DATE : 30th APRIL, 2024

P.C. :

. Heard learned counsel for the parties. By order dated 18.04.2024, this Court had indicated that the proceedings in the suit cannot be permitted to languish at the stage of cross-examination.

2. It appears that the earlier Court Commissioner could not effectively carry out the Commission and that not a single question was put in cross-examination to the attesting witnesses of the said Will.

3. This Court is not going into the reasons as to why the Court Commissioner could not undertake the exercise of cross-examination of the attesting witnesses.

4. Record shows that the proceedings in the present suit have been pending at the stage of cross-examination of the attesting witnesses at least from the year 2019 onwards.

5. It is also a matter of record that the plaintiff and defendant No.1 settled their *inter se* disputes and that the suit was disposed of as against defendant No.1 in terms of order dated 07.06.2022, when consent terms executed between the plaintiff and defendant No.1 were taken on record. As per the said order, apart from the consent terms being taken on record, Notice of Motion No.13 of 2019 and companion interim applications filed by defendant No.1 were disposed of as withdrawn. Notice of Motion No.13 of 2019 filed by defendant No.1 sought rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC).

6. Record also shows that defendant No.2 filed Notice of Motion No.10 of 2019 under Section 10 of the CPC for stay of the proceedings in the present suit, in the light of an earlier suit filed before the Delhi High Court, being a suit for partition. The said Notice of Motion is still pending.

7. Record also shows pendency of Interim Application No.565 of 2020, being an application filed on behalf of the defendant No.3 for initiating proceedings against the plaintiff for alleged perjury. Another application bearing Interim Application No.569 of 2020 for condonation of delay in filing the written statement of defendant Kuldeep Kaur Alag, is also pending.

8. Apart from this, the learned counsel for the defendants informs this Court that recently, a further application has been e-filed on behalf of defendant No.2 and legal heirs of the defendant No.3, under Order VII Rule 11 of the CPC for rejection of plaint, *inter alia*, on the ground of limitation.

9. It is submitted on behalf of the defendants that the pending notices of motion and applications be decided first and thereupon, this Court may issue appropriate directions for recording of the cross-examination of the attesting witnesses.

10. Upon perusal of the record, this Court finds that due to pendency of certain transfer petitions before the Supreme Court at the behest of defendants for transferring the present suit and for other reasons as well, including covid-19 pandemic, the progress in the suit has been hampered. Nonetheless, a Court Commissioner was indeed appointed for cross-examination of the attesting witnesses. The Commission could not be effectively carried out. While the pending notices of motion and the applications can be taken up for hearing, the progress of the suit which has remained in a dormant state, needs to be revived in the interest of justice.

11. Accordingly, the Court Commissioner appointed earlier in these proceedings, is discharged and Mr. Amit Satyavan Jamsandekar, advocate practising in this Court and whose name is in the panel of Court Commissioners, is appointed as a Court Commissioner to undertake the exercise of recording cross-examination of the attesting witnesses. The details of the Court Commissioner are as follows:

Address: 11-D, Examiner Press Building,
Dalal Street, Fort, Mumbai-400023
Email: amitjam@gmail.com
Mob: 9821096838

12. All cross examination shall be conducted strictly in question and answer form.
13. 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 witness, wherever necessary.
14. The Commissioner will also be at liberty to direct that whole or part of cross-examination be video recorded for later reference of the Court. Should that be done, the original audio visual recording shall be submitted along with the Commissioner's report to the Registry.
15. Costs of the commission shall be borne by the plaintiff.
16. The plaintiff shall also pay costs of Rs.500/- per hearing to the Court Clerk, who attends the Commission with the Court papers. This is required since these Clerks attend the Commission, in addition to their duties and outside their normal working hours.
17. The Commissioner shall not permit any application for adjournment on the dates fixed, except where absolutely unavoidable.
18. The Court Commissioner shall submit report with notes of evidence on or before 28.06.2024.
19. List the pending notices of motion and applications for further consideration on 01.07.2024.

(MANISH PITALE, J.)