

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

TESTAMENTARY SUIT NO. 25 OF 2018
IN
TESTAMENTARY PETITION NO.780 OF 2013

Jangbahadur Singh Darshan Singh Gujral Plaintiff

VERSUS

Manmohan Kaur Oberoi & Amarjeet Singh Defendants

Mr.Kunal Bhanane for the Plaintiff.

Ms.Kanchan Kaur, i/b. Mr.B.G.Saraf for the Defendants.

CORAM : R.D. DHANUKA, J.

DATE : 26th NOVEMBER, 2018

P.C.

The matter is placed on board for direction.

2. Learned counsel appearing for the defendants states that her clients have decided to file an application before this court inter alia praying for dismissal of the testamentary suit on various grounds. She further states that her clients are not agreeable for recording of evidence before the learned Court Commissioner.

3. The submissions made by the learned counsel for the defendants are vehemently opposed by the learned counsel for the plaintiff on the ground that both the parties have given their consent to pass an order dated 26th September, 2018 and 11th July, 2018 when this court had framed the issues in the suit and had issued further directions.

4. A perusal of the record indicates that on 1st March, 2017, this court had allowed the Misc.Petition No. 131 of 2015 filed by the defendant herein and had revoked the grant of probate in favour of the plaintiff herein. After 1st March,2017, the matter appeared before this court on several occasions.

5. On 11th July, 2018, this court after hearing both the parties, framed the issues and issued various directions in respect of filing affidavits of the attesting witnesses, the evidence affidavit of the plaintiff and an affidavit of documents and a compilation of documents.

6. The matter thereafter appeared before this court on 26th September,2018. This court marked a copy of the Will as Ex.P-1 and by consent of parties, appointed Mr.Shreenivas Bhave, the counsel of this court as a Court Commissioner. Several directions are issued in the said order to the parties as well as the learned Court Commissioner with a direction to the the office to place the matter on board for direction on 31st October, 2018 for a status report including as to progress before the learned Court Commissioner. In view of these directions passed by this court by consent of both the parties, I am not inclined to grant any adjournment to the caveators as prayed by the learned counsel for the caveators.

7. Insofar as appointment of the Court Commissioner is concerned, a perusal of the order dated 26th September,2018 indicates that the said Court Commissioner is also appointed by consent of both the parties. I

am thus not inclined to accept the request of the learned counsel for the defendants that the evidence be recorded in court.

8. Both the parties are directed to proceed with the recording of evidence before the learned Court Commissioner already appointed by this court by an order dated 26th September,2018 without any further delay.

9. The learned Court Commissioner is requested to submit a report on or before 21st January,2019.

10. Both the parties are directed to co-operate with each other and with the learned Court Commissioner in submitting the report within the time granted by this court.

11. If any of the parties does not co-operate with the learned Court Commissioner, conduct of such party shall be highlighted in the report that may be submitted by the learned Court Commissioner.

12. Place the matter on board on **28th January, 2019** for direction.

[R.D. DHANUKA, J.]