

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY AND INTESTATE JURISDICTION

TESTAMENTARY SUIT NO. 25 OF 2018

Jangbahadur Singh Darshan Singh Gujral ... Plaintiff
VS.
Manmohan Kaur Oberoi and Ors. ... Defendants

Mr. Kunal Bhanage for the Plaintiff.

Ms. Kanchan Dhodi a/w. Mr. Gautam Tiwari i/b. Probus Legal for Defendant nos. 1 and 2.

CORAM : A.K. MENON, J.

DATED : 11th DECEMBER, 2019

P.C.

1. Mr. Bhanage states that there has been a serious error on the part of the Advocates as well as the witness inasmuch as although he had tendered an affidavit believing it to be of Jangbahadur Singh Gujral as recorded in the order dated 29th November, 2019, the deponent who was administered oath was not Mr.Gujral.

2. The witness introduced was administered oath, was shown his affidavit and he had identified signature on the affidavit. Mr. Bhanage states today that the person who had deposed on that date was Mr. Naresh K. Jariwala.

The affidavit was taken on record on oath in the presence of Advocate for the plaintiff. Today Mr. Bhanage seeks recall of the order dated 29th November, 2019 on the basis that it has happened by oversight and that the evidence of that witness is not now to be considered.

3. In view of the aforesaid he requests that evidence of Mr. Ramakant Dasappa Shanbhag be taken on record. Mr. Bhanage states that he has already filed affidavit in lieu of examination in chief of Mr. Ramakant Shanbhag who is present in Court. However it appears that he does know the contents of the affidavit which is affirmed.

4. Mr. Bhanage therefore seeks to withdraw this affidavit. The Affidavit cannot be allowed to be withdrawn once filed. Mr. Bhanage is directed to file fresh affidavit duly affirmed before the registry of this Court. Let such affidavit be filed on or before 19th December, 2019.

5. In the meantime, list the motion for hearing on **18th January, 2020.**

(A.K. MENON,J.)