

Ars

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY & INTESTATE JURISDICTION
TESTAMENTARY SUIT NO. 53 OF 2000
IN
TESTAMENTARY PETITION NO. 358 OF 2000**

S. D. Hamand. ...Plaintiff
Versus
Shri. Sunil R. Hamand. ...Defendant

Ms. Deepa Kamath, for the Plaintiff.
Mr. Rahul Mestry, for the Defendant.

CORAM: G.S. PATEL, J
DATED: 3rd November 2014

PC:-

1. Mr. Mestry, learned advocate for the Defendants, submits that the issues framed on 11th November 2013 require to be recast and that additional issues should also be framed. He submits a draft. I have gone through that draft. None of the additional issues listed by Mr. Mestry, can possibly arise in this probate action. Certainly no question arises of any accounts or title to any part of the properties in question.

2. Though the suit is listed for directions by consent the matter is taken up for marking the Plaintiff's documents. The Plaintiff has filed an affidavit in lieu of examination affirmed on 8th March 2014, an affidavit of documents also of the same date and accompanying compilation of some seven documents.

3. The Plaintiff is personally present in Court, as is the Defendant/Caveator.

4. The first document is the original of a notice issued by the advocate for the testator's wife, one Hirabai, on 7th December 1971. It is accompanied by an English translation. The second document is the testator's advocate's reply of 15th December 1971 with its translation in English. Both documents are referred to in paragraph 2 of the Plaintiff's evidence affidavit. The third document, also connected with the first two, is a weekly newspaper (Talwar) Sangamner Edition, of 24th December 1971, in which a public notice was issued. The original newspaper itself is produced. This document is attested to in paragraph 3 of the Plaintiff's evidence affidavit. These three documents are taken on record and marked in evidence as **Exhibit "P1" to "P3", respectively.**

5. The will dated 8th December 1998 is in Marathi. The original is lodged with the Prothonotary and Senior Master. The third document at Sr. No. 4 is an office translation into English of that will. The office translation is taken on record merely for convenience. A common number is assigned to both the English translation as well as the original. This marking is only for convenience and for ease of reference. The marking does not

establish that the will has been proved. The document at Sr. No. 4, i.e. the English translation, along with the original will are marked **Exhibit “P4”**.

6. The document at Sr. Nos. 5, 6 and 7, are, respectively the death certificates of the deceased and receipts of his funeral ceremonies. These are taken on record and marked in evidence as **Exhibit “P5” to Exhibit “P7”**.

7. List the matter on 1st December 2014 for cross-examination of the Plaintiff’s witness. The Plaintiff is directed also to keep present on that day the attesting witness, whose evidence affidavit has already been filed, so that the cross-examination of both witnesses can, if possible, be completed on that date.

8. The advocates for the Plaintiff shall take back the original documents filed by them upon substituting these with photocopies authenticated by the Plaintiff’s advocates. The Plaintiff agrees and undertakes to preserve the original documents and to produce these documents as and when required in Court till the final disposal of the suit.

(G. S. PATEL, J.)