

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

**TESTAMENTARY SUIT NO.53 OF 2000
IN
TESTAMENTARY PETITION NO.358 OF 2000**

Deepak Suresh Hamand & Ors.Plaintiffs

V/s.

Shri Sunil R. HamandDefendant

Ms. K.C. Nichani i/b. Ms. Deepa Kamath for the plaintiffs.

Ms. Dhanashri A. Narvekar i/b. Mr. Rahul C. Mestry for the defendant.

CORAM : K.R.SHRIRAM,J

DATE : 7th MARCH, 2017

P.C.:-

1 On 7th February, 2017 the matter was stood over because the advocate for the defendant wanted to get material regarding the complaints against PW-1 Dr. Sudarshan Rajaram Kasturi on his professional qualification etc. At the request of the counsel for the defendant, the matter was stood over to today.

2 Ms. Narvekar, counsel for the defendant states that Mr. Mestry has taken leave.

3 The matter is of the year 2000. The advocate for the defendant knew that the matter was fixed today and the witness would also come to the court. The witness is a Doctor, who has kept aside his practice for the day and come to the court to give evidence.

If the advocate on record for the defendant was going on leave he should have made alternate arrangements and should have informed the court, particularly, when the cause list was released on 3rd March, 2017.

4 In view thereof, the cross examination of PW-1 is closed.

5 The plaintiffs' second witness, the plaintiff himself – Deepak Suresh Hamand (PW-2) is present in court and is administered oath. On oath PW-2 confirms having affirmed an affidavit dated 14th December, 2016 and also identifies his signature. The same is taken on record and marked **Exhibit P-8**.

6 Ms. Jayashree Kurup, an advocate practicing in this court, is appointed as Commissioner to record evidence in the matter. The fees, administrative expenses of the Commissioner together with typing charges and venue charges, if any, to be shared equally between the parties, i.e., 50% by the plaintiffs and 50% by the defendant and the same will be costs in the suit.

7 The Commissioner to endeavor to complete recording of evidence of PW-2 by 30th April, 2017. The Commissioner to fix minimum two/three dates per session for cross examination of PW-2. If the parties do not respond promptly within 48 hours of receiving a

communication from the Commissioner suggesting the subsequent dates, the Commissioner to go ahead and fix the dates convenient to the her and the parties shall make themselves available at the time and dates fixed by the Commissioner. If the plaintiffs or the witness do not remain present, the Commissioner should close the evidence of PW-2 as not made available for cross and if the defendant does not remain present to cross examine the witness, the defendant's cross examination should be treated closed as no cross. Once the dates are fixed, the Commissioner not to grant adjournment on any ground whatsoever.

Liberty to apply.

(K.R.SHRIRAM,J)