

Dixit

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY AND INTESTATE JURISDICTION

TESTAMENTARY SUIT NO.37 OF 2008

IN

TESTAMENTARY PETITION NO.52 OF 2006

Sindhu Parshuram ShindePlaintiff

V/s.

Pradeep Parshuram ShindeDefendant

Mr. Anand P. Mishra for the Plaintiff.

None for the Defendant.

CORAM : A.K. MENON, J.

DATED : 19TH AUGUST, 2019.

P.C. :

1. Called for directions.

2. Learned counsel for the plaintiff submits that attempts at mediation have failed. In view thereof, it will be necessary to proceed with the suit. The suit is of the year 2008. In view thereof, issues are framed.

3. Testamentary Suit No.63 of 2007 is filed by the defendant in Testamentary Suit No.37 of 2008. Since he had filed a Caveat in Testamentary Petition No.511 of 2007 on 31st January 2017, the Testamentary Suit No.63 of 2007 came to be dismissed. As on date, only Testamentary Suit No.37 of 2008, is to proceed.

4. It is stated that mediation has failed. The Mediator has filed report on 18th July 2019, stating that some interim settlement was arrived at in principle. The report indicates that the defendant is now unwilling to agree to even the interim arrangement proposed and recorded by the Mediator. In view thereof, the suit will have to proceed. Affidavit-of-documents is filed on record.

5. Respondent is not represented by his Advocate today. It is made clear that this suit, being Testamentary Suit No.37 of 2008, will now proceed on the next date. The Advocate instructed on behalf of the defendant to remain present on the next date.

6. In the meantime, Mrs. Sindhu Parshuram Shinde, the witness on behalf of the plaintiff, is present before the court and has tendered her affidavit in lieu of examination-in-chief dated 20th April 2019, which has been taken on record and marked as "Exhibit P-1".

7. As far as the documents filed by the plaintiff are concerned, along with the affidavit-of-documents, the defendant has filed his say dated 22nd April 2019 pursuant to the inspection being granted to the defendant. In view thereof, the following documents are admitted and marked as follows :-

Sr. No.	Description of the Documents	Exhibit No.
1	Reply given by the Plaintiff-Sindhu Parshuram Shinde to MHADA vide letter dated 1 st June 2009.	P-2
2	Application dated 23 rd June 2009 addressed by the Plaintiff-Sindhu Parshuram Shinde to the Reliance Energy Ltd.	P-3
3	Electricity Bills issued in the name of late Parshuram M. Shinde for the months December 2007 and December-2010.	P-4(1) to P-4(2)
4	Pitch Card No.A-302 1/3 in the name of late Parshuram M. Shinde.	P-5
5	Pitch Card No.A-302 2/3 in the name of late Parshuram M. Shinde.	P-6
6	MTNL Bill dated 12 th November 2005 issued in the name of late Parshuram M. Shinde	P-7
7	Aadhar Card No.3028 7679 0503 in the name of Plaintiff-Sindhu Parshuram Shinde.	P-8

8. The remaining documents, such as copies of the maintenance receipts issued by the co-operative society, tax assessment receipts, property tax payment receipts issued by the Brihanmumbai Mahanagar Palika are not admitted because the plaintiff is not the author of those. In my view the existence of these, originals of which are produced are liable to be marked for want of express denial as follows :-

Sr. No.	Description of the Documents	Exhibit No.
8	Copy of Maintenance Receipt No.247 dated 5 th October 1997 issued by Mahatma Co-op. Housing Society Ltd., Santacruz (E), Mumbai in the name of late Parshuram Mahadeo Shinde.	P-9
9	Copy of Maintenance Receipt Nos.802 dated 13 th March 2019 issued by Mahatma Co-op. Housing Society Ltd., Santacruz (E), Mumbai in the name of late Parshuram Mahadeo Shinde.	P-10
10	Tax Assessment Receipt No.2019ACRO2296380 dated 22 nd February 2019 issued by the Brihanmumbai Mahanagar Palika, H/East Ward Office, in the name of late Parshuram Mahadeo Shinde.	P-11
11	Receipt No. HE/ANC/04/004521 dated 7 th September 2004 issued by the Brihanmumbai Mahanagar Palika, H/East Ward Office, in the name of Smt. G.M.Shinde.	P-12
12	Copy of the letter dated 1 st June 2009 addressed by the plaintiff to the MHADA, X-1.	X-1

9. The original documents are returned to the Advocate for the plaintiff on condition that they will be produced as and when required.

10. In view of the fact that the defendant, who is present in the court, now seeks time to appoint a new Advocate, two weeks time is granted to him to make alternate arrangements.

11. Mr. Suyash Gadre, Advocate, is appointed as Commissioner to conduct recording of evidence. Defendant shall accordingly arrange to instruct his

Advocate to have cross-examination completed within a period of four weeks from today.

12. List the suit for directions on 23rd September 2019.

13. It is made clear that if an adjournment is sought on the part of the defendant on the next date, this court will be constrained to impose costs.

(A.K. MENON, J.)