

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISCELLANEOUS PETITION NO. 66 OF 2012
IN
TESTAMENTARY PETITION NO. 498 OF 2009**

Pushpa Shrikant Patki & Ors. ...Petitioners
Versus
Vinod Chandrakant Donde & Anr. ...Respondents

Mr. Kaushal Tamhane, *i/b Ms. Meenakshi Dhanuka, for the
Petitioners.*

Mr. Sandip Parikh, *a/w Ms. Neha Bhatt, i/b M/s. Bilwala & Co., for
the Respondents.*

CORAM: G.S. PATEL, J
DATED: 21st April 2016

PC:-

1. Three documents were shown to the Plaintiff's first witness, PW-1, Mrs. Usha Satish Kulkarni during her cross-examination on commission.
2. The first document is an Affidavit dated 9th February 1992. Questions 115 and 116 relate to this document. The witness admitted the document. It is taken on record and marked in evidence as **Exhibit "R1"**.

3. The second document is an Affidavit dated 18th February 2010. This is a subject matter of questions 136 to 139 of the cross-examination. The witness has accepted this document as well. She has, however, made a clarification as to the notarial stamps at page 2. This is noted. This document, in view of the witness's answers, taken on record and marked in evidence as **Exhibit "R2"**.

4. The third document is the certified copy of a notarial register. It is the subject matter of questions 139 to 143 of the cross-examination. In view of the witness's answers, this document is taken on record and marked in evidence as **Exhibit "R3"**.

5. All contentions as to the relevance and evidentiary value of these documents are left to the trial of the suit.

6. Cross-examination of PW-1 is complete.

7. Previously, Ms. Pooja Kshirsagar was appointed as a Commissioner. She is now again requested to record the cross-examination of the Plaintiff's next witness.

(a) The Commissioner is at liberty to exercise discretion under Order XVIII Rule 4(4) of the Code of Civil Procedure, 1908, to note the demeanour of the witnesses where necessary.

(b) All cross-examination shall be conducted strictly in question and answer form.

- (c) The Commissioner will also be at liberty to direct that the whole or any part of the cross-examination should be video recorded for later reference of the court. Should that be done, the original audio visual recording will be submitted along with the Commissioner's Report to the Registry.
 - (d) Liberty to the parties as also to the Commissioner to apply in case of difficulty.
 - (e) All re-examination will be conducted only in court.
 - (f) Costs of the commission shall be borne equally by the parties.
 - (g) The Commissioner is not to permit any applications for adjournment on dates previously fixed, except where absolutely unavoidable. Counsel's inconvenience or unavailability does not constitute such unavailability.
8. List the matter on 4th July 2016 for a status report including as to progress before the Commissioner.
9. Costs of the commission shall be borne equally by both sides.

(G. S. PATEL, J.)