

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY AND INTESTATE JURISDICTION

SUIT NO. 603 OF 2013

Dr. Govindaraja Venkatesh Iyengar] Plaintiff
Vs.
A.R. Sampathkumar & Ors.] Defendants

**WITH
TESTAMENTARY SUIT NO. 42 OF 2012
IN
TESTAMENTARY PETITION NO. 64 OF 2011**

Dr. Govindraja Venkatesh Iyengar] Petitioner
A.R. Sampathkumar] Caveator/Defendant

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Mr. Vipul Bilve i/b Mulla & Mulla & Craigie Blunt and Caroe, for
plaintiff.
Mr. Prakash Iyengar, C.A for defendants.

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CORAM : R.G. KETKAR, J.

DATE : 28th AUGUST, 2017.

P.C.:

Heard Mr. Prakash S. Iyengar son and Constituted Attorney of caveator A.R. Sampathkumar and Mr. Bilve,, learned Counsel for the plaintiff at length.

2. Mr. Iyengar has moved this matter by way of praecipie dated 21st August, 2017. Mr. Iyengar has submitted that defendant No.6 Mysore Co-operative Housing Society Limited has issued Share Certificate in favour of Dr. Anekal Ramaswamiengar Gopal

Iyengar and as per the decision taken in Managing Committee's meeting dated 9th September, 1990 in favour of Smt. Rajalakshmi Gopal Iyengar. He submitted that defendant No.6 has tampered original share certificate. Defendant No.2 has initiated criminal proceedings against defendant No.6-Society for tampering original share certificate and that he has succeeded before all the different Fora.

3. By the present praecipie, he has prayed that defendant No.2 may be permitted to file written statement in reply to the written statement filed by defendant No.6-Society. Defendant No.2 has filed written statement dated 8th January, 2014 in this Court on 10th January, 2014. Defendant No.6 has filed written statement dated 9th January, 2014. As defendant No.6 has played pivotal role in transferring the property to Smt. Rajlakshmi fraudulently in the year 1998 i.e after six years from the death of A.R. Gopal Iyengar, defendant No.2 may be permitted to file written statement in reply to written statement filed by defendant No.6.

4. Mr. Bilve submitted that there is no provision in the Code of Civil Procedure, 1908 [for short 'C.P.C'] enabling the defendant to file written statement in reply to written statement filed by co-defendant. He, therefore submitted that defendant No.2 is not entitled to file written statement in reply to the written statement of co-defendant i.e defendant No.6/Society.

5. I have considered the rival submissions advanced across the bar. I have also perused the material on record. A short

question that arises is whether defendant No.2 is entitled to file written statement in reply to written statement filed by defendant No.6 in the present suit. No provision of C.P.C was brought to my notice enabling defendant No.2 to file written statement in reply to written statement of co-defendant i.e defendant No.6.

6. In view thereof, request made in the praecipie dated 21st August, 2017 cannot be acceded to. Praecipie is accordingly disposed of.

[R.G. KETKAR, J.]