



Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
TESTAMENTARY SUIT NO. 68 OF 2016
IN
TESTAMENTARY PETITION NO. 1330 OF 2014

Vijay G Kulkarni & Ors ...Plaintiffs
Versus
Manisha D Kulkarni ...Defendant

Mr BG Saraf, for the Plaintiff.
Mr Ankur Shah, with Mr Jatin Sheth, i/b Jatin Sheth, for the
Defendant.

CORAM: G.S. PATEL, J
DATED: 12th October 2018

PC:-

1. There is an additional Affidavit of Evidence filed with leave of the Court by 1st Petitioner and affirmed on 5th October 2018. He deposes in this Affidavit sufficiently to documents 4 and 5 of the original compilation of documents being handwritten letters dated 3rd October 2003 and 28th November 2003.
2. Having regard to these circumstances, the death certificate of the deceased at Sr. No. 1 and dated 27th August 2006 is taken on record and marked in evidence as **Exhibit "P2"**.



3. The Will propounded has already been marked as **Exhibit “P1”**.

4. The document at page 10 of the compilation is a photograph of a wedding ceremony. The deposition in paragraph 2 of the first Evidence Affidavit is wholly inadequate to prove the photograph. That evidence only says that the deceased was present at the wedding ceremony of one Pradnya Vishwas Joshi, the daughter of Vishwas Joshi, attesting witness No.1. That will not prove the photograph as required by law. The photograph is marked “X1” for identification.

5. In view of the testimony in the additional evidence affidavit, the two handwritten letters dated 3rd October 2003 and 28th November 2003 are taken on record and further Affidavit filed by 1st Petitioner is taken on record and marked in evidence as **Exhibits “P3” and “P4”, respectively**.

6. The death certificates annexed to the additional compilation being the death certificates of Madhavrao Rajebahadur and of Madhavi Rajebahadur, the son-in-law and daughter of the deceased are taken on record and marked in evidence as **Exhibits “P5” and “P6”, respectively**.

7. By consent, Mr Aditya Pimple has already been appointed as a Commissioner and is now requested to record the cross-examination of the Plaintiff’s first 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) Parties shall also pay costs of Rs. 500/- per hearing to the Court Clerk who attends the Commission with Court Papers. This is required since these clerks attend the commission in addition to their regular duties and outside their normal working hours;
- (h) 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 unavoidability.



8. List the matter on 19th December 2018 for a status report including as to progress before the Commissioner.

(G. S. PATEL, J)