

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

**TESTAMENTARY SUIT NO. 105 OF 2023
IN
TESTAMENTARY PETITION NO. 703 OF 2019**

Hasumati A. Vora and anr. ...Plaintiffs

Versus

Devika Abhay Gandhi and ors. ...Defendants

Mr. Shyam Kapadia, a/w Chakrapani Misra, Sameer Bindra
and Ananya Misra, i/b Khaitan & Co., for the Plaintiffs.
Mr. Atharva Dandekar, for the Defendant.

CORAM: N. J. JAMADAR, J.

DATED : 10th DECEMBER, 2024.

PC:-

Plaintiff's first witness is present in Court and
administered oath.

Name : Ms. Hasumati A. Vora.
Age : 71 yrs.
Address : Flat No.1, Prabhat Building, 1st Floor, 76,
Mumbai – 400 026.

On S. A.

The Affidavit in lieu of examination-in-chief affirmed on
23rd April, 2024 is now shown to me. It is affirmed by me. It
bears my signature. The contents of the affidavit in lieu of
examination-in-chief are true and correct. The affidavit in lieu
of examination-in-chief is marked '**Exhibit-P1/1**'.

P.C.:

1. Plaintiff No.1 has produced compilation of 5 documents. A statement of admission and denial of the documents on behalf of the defendants, is made. The defendants have admitted in evidence the document at Sr. No.3.
2. The defendants have denied the existence and contents of the rest of the documents.
3. The documents at Sr. No.3 being the copies of the documents pertaining to the property at Morbi, Gujarat, are marked **Exhibit-P1/2**.
4. The document at Serial No.1 being the Power of Attorney executed by the deceased in favour of plaintiff No.1, is marked **Exhibit-P1/3**. (In view of the averments in paragraph 3 of the Affidavit in lieu of examination-in-chief.)
5. The documents at Serial No.2 being the medical reports pertaining to the treatment of the deceased are marked **Exhibit-P1/4** collectively. (In view of the averments in paragraph 3 of the Affidavit in lieu of examination-in-chief.)
6. The document at Sr. No.4 is the note circulated by Mr. Deepak Bhayani, which is also signed by plaintiff No.1. The document at Sr. No.4 is marked **Exhibit-P1/5**. (In view of the

averments in the paragraph 10 of the affidavit in lieu of examination-in-chief).

Subject to objection on behalf of the defendant that the signatures of the other purported signatories to the note are disputed.

7. The documents at Sr. No.5 are true copies of the common application forms filled in by the deceased and/or deceased and the applicant. The documents at Sr. No.5 are marked **Exhibit-P1/6** collectively. (In view of the averments in paragraph 13 of the affidavit in lieu of the examination-in-chief).

8. The examination-in-chief of PW No.1 is complete.

9. The cross-examination of PW-1 be recorded, on commission.

10. By consent Mr. Bhuvan Singh, Advocate, is appointed as a Commissioner and is requested to record the cross-examination of the plaintiffs' 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 duties and outside their normal working hours.
- (h) The Commissioner is not to permit any application for adjournment on dates previously fixed, except where absolutely unavoidable. Counsel's inconvenience or unavailability does not constitute such unavoidability.
- (i) The exercise of recording the cross-examination be completed within a period of six weeks.

List for further directions on 18th February, 2025.

[N. J. JAMADAR, J.]