

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL (L) NO.69 OF 2015
IN
TESTAMENTARY SUIT NO.2 OF 2014
IN
TESTAMENTARY PETITION NO.633 OF 1989**

Chandrakant Jayantilal Shah

.... Appellant/Org.
Plaintiff

V/s

Lalitchandra Jagjivandas Juthani
and Anr.

..... Respondents/
Org. Defendants

Mr. Brijesh Upadhaya i/b Mr. Girin Pandit for the Appellant.
Mr. Zubin Behramkamdin alongwith Mr. K.B. Purohit i/b Purohit &
Purohit for the Respondents.

**CORAM: V. M. KANADE &
A.R. JOSHI, JJ.**

DATE: 16th February, 2015

P.C.:-

1. Grievance of the Appellant is that though a direction was given by the learned Single Judge A.S. Oka, J. by order dated 20/11/2009 passed in Notice of Motion No.111 of 2009 in Testamentary Petition No.633 of 1989 that Testamentary Suit No.2 of 2009 should be heard alongwith Testamentary Suit No. 19 of 2005, the learned Single Judge was pleased to de-tag both the suits and thereafter dismissed Suit No.2 of 2009 without giving proper opportunity to the Plaintiff to lead evidence. This submission is opposed by the learned Counsel for the Respondents. He submitted that these two suits were tagged

together and both these suits were to be heard one after the other. He further submitted that the Plaintiff was not in a position to prove the Will in his suit since both the attesting witnesses have expired and the signature of the deceased who had propounded the Will was not proved. He further submitted that though the suit was shown under the caption of direction, there was a specific order passed by the learned Single Judge that even if the Suit was shown under the caption of direction, the suit would be heard by leading evidence.

2. We have perused the order passed by the learned Single Judge A.S. Oka, J. dated 20/11/2009 where there is a specific direction given for tagging both the suits together. However, it appears that the learned Single Judge (Coram: G.S. Patel, J.) has de-tagged the said two suits. Apart from that, the learned Single Judge has arrived at an opinion that the document is incapable of being proved.

3. We are of the view that an opportunity ought to have been given to the Plaintiff to lead evidence. The impugned order is, therefore, set aside. Hearing of the second suit is stayed. The learned Single Judge may give an opportunity to the Plaintiff and thereafter decide the suit on merits and in accordance with law. All contentions raised by both the parties are kept open.

4. Appeal is allowed in the aforesaid terms and disposed of.

(A. R. JOSHI, J.)

(V.M. KANADE, J.)