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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO.81 OF 2014
IN
TESTAMENTARY SUIT NO. 18 OF 2013
IN
TESTAMENTARY PETITION NO. 1164 OF 2012

Dilip Dadhawala and anr	...Plaintiff
<i>Versus</i>	
Mrs. Neeta Vijay Navalkar	Defendants

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Mr.Amol Kharat *i/by M/s Gabriel Pillai, for the Plaintiff.*
Mr.Vikas Kapil, *i/by T. M. Golde, for the Defendants Nos 2 &3.*
Mr. P. V. Samant, *i/by Mr. Bhawe & Co. for Defendant No.1.*

CORAM: G.S. PATEL, J
DATED: 7th January 2015

PC:-

1. This is a Motion filed by the original Petitioner/Plaintiff. He seeks that the Defendants be directed to provide details of movable and immovable properties of the deceased as also accounts of the estate of the deceased. He also seeks the appointment of a Court Receiver, an injunction and directions to hand over to the Plaintiff the movable and immovable properties of the deceased.

2. The Plaintiffs are the executors named in a testamentary writing said to have been executed by one Indira Jayantilal Doshi. In the petition in support of present Notice of Motion, apart from a generalized statement “that many movable and immovable properties of the deceased which are lying in the custody of Defendants” no further particulars are provided. The documents annexed to the affidavit in support are all copies of letters addressed by the Plaintiff’s Advocate to the Defendant’s Advocate. Indeed in the affidavit in support, there is not a single assertion against the 1st Defendant who has, therefore, quite rightly not filed an affidavit in reply.

3. An Affidavit-in-reply dated 7th January 2015 has been filed today by the 2nd Defendant. In this affidavit, the 2nd Defendant states that neither he nor the 3rd Defendant have been served with a copy of the Probate Petition. All that they have received is the citation itself. The 2nd Defendant has also stated that neither he nor the 3rd Defendant have custody or control of any of the properties of the deceased. The flat in question at Paschim Apartment has been gifted to the 3rd Defendant and it is that Defendant’s sole property. It is quite correctly pointed out that the affidavit in support of the Notice of Motion makes allegations against the brother of Defendant Nos 2 & 3, one Jayendra Jayantilal Doshi. Jayendra Jayantilal Doshi has not been joined as a party to the suit. He has not even made a Respondent to the Notice of Motion, and the Notice of Motion is not addressed to him.

4. In view of the categorical statements by the 2nd and 3rd Defendant that they have no properties which they are required to

disclose and since there is no rejoinder controverting these statements, the Notice of Motion is dismissed with no order as to costs.

(G. S. PATEL, J.)