

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 77 OF 2014
IN
TESTAMENTARY PETITION NO. 1092 OF 2009
AND
TESTAMENTARY SUIT NO. 41 OF 2003
IN
TESTAMENTARY PETITION NO. 708 OF 2002**

Mrs. Usha Bharat Shetty

...Plaintiff

Versus

Sadanand A. Shetty

...Defendant

Mr. Ajit Karwande, *for the Plaintiff in TS 41/03 & Defendant in TP 708/02.*

Mr. M.D. Naik, *for the Defendant in TS 41/03 & Plaintiff in TP 708/02.*

CORAM: G.S. PATEL, J
DATED: 6th January 2015

PC:-

1. This is an application by the Caveator to tag Suit No. 41 of 2003 (in Testamentary Petition No. 708 of 2002) along with Testamentary Petition No. 1092 of 2009. These two Testamentary

Petitions pertain to two different testators. The Wills are different. The attesting witnesses are different. There is no question of these matters being tagged together or all the evidence being common as Mr. Naik correctly points out. Each matter will proceed separately. Since the property in question is the same, the two matters may be taken up for hearing sequentially once the evidence in both matters is complete. There is, therefore, no question of consolidating the two cases.

2. Prayer (b) of the Motion is one that cannot be granted. Originally, Testamentary Petition No. 134 of 1992 was for probate. The executors who had filed that Petition both passed away. The Petitioner was then continued as Letters of Administration with Will annexed by one of the Petitioners. There is no question of recalling the order of 5th February 2019 on the Probate Petition.
3. Notice of Motion is dismissed with no order as to costs.

(G. S. PATEL, J.)