

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.375 OF 2011
IN
TESTAMENTARY SUIT NO.60 OF 2007
IN
TESTAMENTARY PETITION NO.673 OF 2007

Ashok Jessaram Lalwani	Appellant
versus	
Suresh Jessaram Lalwani	Respondent

Mr.Kapil Moya i/by Mahendra Patel & Associates for Appellant.
Mr.A.Randeria i/by Prerak Choudhary for Respondent.

CORAM : A.S.OKA AND P.D.NAIK, JJ.

DATE : 27th April 2016

ORAL JUDGMENT (Per : A.S.Oka, J.) :

1. Called out for final hearing. By this appeal, the Appellant (original Defendant in a testamentary suit) has challenged the judgment and decree dated 21st April 2010 passed by learned Single Judge in the testamentary suit. By the impugned judgment and decree, learned Single Judge has granted Letters of Administration of the estate of the deceased to the Respondent-Plaintiff. The submission of learned counsel for the Appellant is that by order dated 19th April 2011, the learned Single Judge after noting that the Respondent had filed an affidavit in lieu of examination-in-chief, directed the Respondent to file affidavit of

documents and the suit was ordered to be listed on 21st April 2011. His submission is that instead of proceeding with the recording of evidence on 21st April 2011, the learned Single Judge proceeded to dispose of the suit by passing a decree, which is impugned in this appeal.

2. Learned counsel for the Respondent, on instructions, states that the Respondent desires to step into the witness box and adduce evidence as he has already filed affidavit in lieu of examination-in-chief. He, therefore, states, on instructions, that the Respondent has no objection if by setting aside the impugned judgment and decree, the suit is remanded to the learned Single Judge with permission to the Respondent to adduce evidence. He submits that if necessary, the Respondent may be permitted to file supplementary affidavit in lieu of examination-in-chief. He submits that the hearing of the suit be expedited as the testamentary petition is of the year 2007.

3. As far as the priority to the hearing of suit is concerned, the matter will have to be left to the learned Single Judge. In view of the submissions made by learned counsel for the Respondent, we pass following order :

(a) The impugned judgment and decree dated 21st April 2011 is set aside and Testamentary Suit No.16 of 2007 is restored to the file;

(b) We direct the registry to place the suit before the learned Single Judge taking up testamentary suits for final hearing on Monday, 13th June 2016 under caption "for directions";

(c) It will be open for the Respondent to file supplementary affidavit in lieu of examination-in-chief within a period of two weeks from 13th June 2016. It will also be open for the Respondent to file affidavit of documents within a period of two weeks from 13th June 2016;

(d) It will be open for the Respondent to make a prayer before Single Judge for giving necessary priority to the hearing of the suit. We are sure that if the learned Single Judge is satisfied that priority deserves to be given to the hearing of the suit, he will pass necessary orders;

(e) The appeal is partly allowed in the above terms with no order as to costs;

(f) We make it clear that no adjudication is made on the merits of the testamentary suit.

(PD.NAIK, J.)

(A.S.OKA, J.)

MST