

JSN

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 146 OF 2016
IN
TESTAMENTARY SUIT NO. 102 OF 2012
IN
TESTAMENTARY PETITION NO. 726 OF 2012**

Varsha Bhadresh Joshi	... Applicant
<i>And</i>	
Suresh Manilal Mehta	...Plaintiff
<i>Versus</i>	
Varsha Bhadresh Joshi	...Defendant

Mr. Satish Shah, *with Pallavi Dalal i/b Kanchan Pamnani for the Plaintiff.*

Mr. A.R. Pai, *with Devendra Avhad, and Tgejas Luniya, for the Caveators / Respondent.*

**CORAM: G.S. PATEL, J
DATED: 6th October 2016**

PC:-

1. Mr. Pai for the Defendant in Testamentary Suit No. 102 of 2012 submits that these three distinct actions should be heard 'together'. The dispute is between siblings, a brother and sister. There is a Testamentary Suit in which the Will of their father is propounded. He died before their mother. There is another

contested Testamentary Suit propounding the mother's Will. A third action is for administration of both estates.

2. Now the application in this Notice of Motion from Mr. Pai seems to be that the hearing of the Petition in regard to the father's Will should be deferred till the evidence in the other two matters is complete and that all should be heard together. This cannot possibly be necessary. It is true that the two siblings would on intestacy take a 50% share in each of their parents' estates. This is wholly besides the point. The fate of the administration Suit necessarily depends on the outcome of the two actions regarding the Wills of the father and the mother, in that sequence.

3. The trial in Testamentary Suit No. 102 of 2012 which propounds the Will of the father is complete. The record has been rearranged. This application comes very late in the day and it serves no useful purpose that I can tell other than delaying the final disposal of this Testamentary Suit. It is entirely possible that the attempt by the Defendants in the Suit is to expand the available defence by referring to the other two proceedings. This I will not allow. Each matter will be considered on its own merits and in this sequence. The only purpose in clubbing these matters is for administrative convenience and for the convenience of the parties.

4. Mr. Pai submits that if this is not done, the administration Suit will be delayed and there will be a duplication of evidence. Mr. Pai is completely wrong in this. If the probate action succeeds the administration action in its current form will entirely become

infructuous and the Suit will fail, and no evidence will be necessary. Taking evidence when it might not be necessary is the real waste. That evidence will be taken if the testamentary actions fails because, of course, the administration Suit proceeds on the footing that both parents died intestate. If the Wills are proved that Suit cannot possibly survive. There will, therefore, be no question of evidence and Mr. Pai's anxieties and concerns on that count are therefore totally unfounded. His application, as I see it, is simply that the final hearing of the present suit, otherwise fully ready, should be adjourned for the next several years. I may note that in Testamentary Suit No. 75 of 2010 which propounds the Will of the mother, issues are framed, the Affidavit of one attesting witness is filed but cross examination is yet to begin. In Testamentary Suit No. 3068 of 2011 issues have not even been framed. The long and short of all of this of course, is that Mr. Pai would have me defer the hearing of a trial that is complete in every respect to the end of a matter where issues have not even been framed. He does not even suggest that that trial can in any way be expedited, because it surely cannot. I find no reason whatsoever to accept his submission or to allow the Notice of Motion.

5. Mr. Pai objects to the matter being taken up for final hearing, saying that the matter is listed today only for directions and therefore it cannot be finally heard today. Again, Mr. Pai is wrong, and this reliance on hyper technicalities will not be allowed to add to the already unconscionable delays. The Suit is of 2012. It has been pending far too long already. The record will indicate that the trial was completed after a fair amount of difficulty. The Plaintiff has struggled to rearrange this record.

6. At this stage, Mr. Pai says that he wishes to test this order and carry it in Appeal. There is nothing I can think of that would persuade me to grant him a stay for a single minute. No rights are being decided by dismissing this Notice of Motion. Mr. Pai cannot demonstrate to me that he has any right to demand the deferral of the hearing of a matter in which the trial is already complete. In short, none of the rights of the parties are determined by a dismissal of this Notice of Motion. On the other hand, allowing the Notice of Motion would conceivably prejudice the Plaintiff as also the trial and might actually result in a determination of the rights of the Plaintiffs in the first matter that is ready.

7. Notice of Motion No. 146 of 2016 is dismissed with costs quantified at Rs.1 lakh. These costs may be recovered in execution of this order. Drawn up order dispensed with. An authenticated copy may be put into execution.

8. Now Mr. Pai accepts that since no rights are decided by the dismissal of his Notice of Motion, no appeal will lie. However, he requests for time to put his house in order and to paginate his brief. That is not unreasonable. On his request, I will grant him time till next Thursday 13th October 2016. Matter to be listed on that day for hearing and final disposal.

9. At Mr. Pai's personal request and since he seeks only a short adjournment to proceed with the final hearing, the order of costs is recalled.

(G. S. PATEL, J.)