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

APPEAL No. 473 OF 2015
IN
TESTAMENTARY SUIT No. 49 OF 1999
IN
TESTAMENTARY PETITION No. 26 OF 1999

WITH
NOTICE OF MOTION No. 2090 OF 2015
IN
APPEAL No. 473 OF 2015
IN
TESTAMENTARY PETITION No. 26 OF 1999

Mrs. Dorothy Ravindra Pawar	...Appellant
Vs.	
John David Gonsalves	...Respondent

Mr.Clive D'Souza for Appellant
Mr.Ashok Tajane for Respondent No.1

CORAM : V. M. KANADE
REVATI MOHITE DERE, JJ.

DATE : JANUARY 04, 2016

P.C. :

1. Heard the learned counsel appearing on behalf of the Appellant and the learned counsel for the Respondent.
2. The Appellant is aggrieved by an order passed by the Learned Single Judge dated 10th August, 2015. By the said order, the Learned Single Judge has not permitted the plaintiff to lead her own evidence on the grounds mentioned in the said order.

(APP 473 of 2015)

3. We have perused the impugned order. We are satisfied that the reasons given by the Learned Single Judge for not permitting the plaintiff to lead her evidence are sufficient for passing the impugned order. The Learned Single Judge has observed that the plaintiff was prompting the witness with the answers while cross examination was going on. The Learned Single Judge, therefore, has observed that the conduct of the Plaintiff is simply inexcusable and on that ground the Learned Single Judge has not permitted the plaintiff to lead her own evidence.

4. In our view, since the Learned Single Judge could have noted the conduct of the Plaintiff while appreciating the evidence of that witness and then decided what is the probative value of the evidence given by the witness. Impugned order, therefore, is set aside. The plaintiff is permitted to lead her own evidence. It is clarified that it is open for the Learned Single Judge to decide at the time of final hearing of the suit to what extent reliance should be placed on the evidence given by the plaintiff's witness Sitaram Sonu Mane. Plaintiff is permitted to lead her own evidence. The appeal is disposed of in the aforesaid terms.

5. Notice of motion does not survive and is also disposed of. Hearing of the suit is expedited.

[REVATI MOHITE DERE, J.]

[V. M. KANADE, J.]