

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4834 OF 2017**

Faredoon Maneekji Dalal & Ors	...Petitioners
<i>Versus</i>	
Victor Saldhana & Ors	...Respondents

Mr Cyrus Ardeshir, *a/w Ms Shivani Khanna & Mr Sahil Bijliwala,*
i/b FZB & ASS, for the Petitioners.
Mr Ashok K Goel, *for Respondents Nos.1 to 5.*

CORAM: G.S. PATEL, J
DATED: 28th November 2017

PC:-

1. The challenge is to an order of 4th October 2016. The only ground for urgency is that by that order an amendment was allowed to the written statement of Defendant No.1 and the trial is proceeding. Defendant No.1 said that he learnt of a probate of 23rd November 1938 to a Will of 8th April 1935 only on 15th September 2015 when the Plaintiffs produced their documents (or perhaps in 2013 — there is some controversy about this).

2. Mr Ardeshir for the Petitioners contends that the statement is incorrect on facts and can be so demonstrated. That is not the issue. The reason for allowing the amendment was to furnish the 1st Defendant with the fullest amplitude in setting up his case and to

ensure that his cross-examination, including putting his case to the Plaintiff, was not compromised or shut out for want of a necessary pleading.

3. I see no reason to interfere with the impugned order. However it may be necessary to clarify that the Trial Court must allow the Plaintiffs liberty to lead additional evidence either directly in Court or by filing a further Affidavit in lieu of examination-in-chief including on the factual question that the 1st Defendant and the 5th Defendant were aware of the probate for a very long time and did not gain knowledge of it only in 2013/2015. It is also necessary to clarify that the introduction of the probate document is for a limited purpose of knowledge of Defendant No.1. It does not mean that the Trial Court in an eviction action can decide a question of title. That is clearly beyond the jurisdictional remit of the Rent Court.

4. With these observations the Writ Petition is disposed of. There will be no order as to costs.

(G. S. PATEL, J.)