

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION

TESTAMENTARY SUIT NO.27 OF 2007
IN
TESTAMENTARY PETITION NO.26 OF 2007

Sadhana K. Desai ... Plaintiff
Vs.
Nitin C. Gothi and another ... Defendants

Ms Yasmmeen Mohd. Sabir i/b. Mr. Gopal Shah for Plaintiff.

CORAM : R. G. KETKAR, J.
DATE : SEPTEMBER 11, 2017

P.C. :

Heard Ms Sabir, learned Counsel for the plaintiff.

2. Ms Sabir has invited my attention to the order dated 24.07.2017 passed by this Court (Coram : R. D. Dhanuka, J.) in the above Suit. The order recorded that the caveat of the defendant no.1 along with affidavit in support of the caveat were already dismissed by an order dated 7.07.2017 passed by this Court. Learned counsel appearing for the plaintiff relied upon a letter dated 23.09.2016 addressed by the defendant no.2 i.e. the widow of the original defendant no.2 stating that she did not intend to pursue the matter and requesting the plaintiff to proceed with the matter without joining her on record as legal heir of the original defendant no.2 in the testamentary suit.

3. The order further recorded that pursuant to the order dated 7.07.2017, the plaintiff served a fresh notice upon the defendant No.2 i.e. the widow of the original defendant No.2 with a request to remain present before this Court. The plaintiff had filed affidavit of service dated 21.07.2017. Defendant No.2 was absent, though served. The

statement of the learned Counsel for the plaintiff that the original of the letter dated 23.09.2016 addressed by the defendant no.2 to the learned advocate for the plaintiff was filed before the learned Court Commissioner was recorded. A photocopy of the said letter was placed on record. In view of the statements of the defendant No.2 in the said letter that she does not want to pursue the matter, the original caveat filed by her husband (original defendant no.2) was dismissed. Office was directed to proceed with the matter as uncontested matter. Office was further directed to accept the report from the learned Commissioner, if filed on or before 27.07.2017.

4. Ms Sabir states that report is also filed within the stipulated period by the Court Commissioner.

5. In view thereof, Testamentary Suit No.27 of 2007 stands decreed and is disposed of accordingly.

(R. G. KETKAR, J.)

Minal Parab