

vai

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

NOTICE OF MOTION NO.59 OF 2014
IN
TESTAMENTARY SUIT NO.70 OF 2006
IN
TESTAMENTARY PETITION NO.742 OF 2005

Prem Makhija ...Applicant

IN THE MATTER BETWEEN :

Prem Makhija ...Plaintiff
V/s.
Madhu Mansharamani & Ors. ...Defendants

Mr.Neel Punliya for the Applicant / Original Plaintiff in TS No.70 of 2006.

Mr.Jawahar Thakkar for the Defendant no.3 in TS No.70 of 2006 and for the Plaintiff in TS No.21 of 2009 and for the Applicant in NMT No.117 of 2017.

Mr.A.H. Nagi for the Respondent.

Mr.Y.K. Sharma for the Defendant No.2 in TS No.70 of 2006.

CORAM : R.D. DHANUKA, J.

DATE : 24TH JULY, 2017.

P.C. :-

1. Learned counsel appearing for the applicant (original plaintiff) seeks liberty to delete the name of the defendant no.1 on the ground that she has already expired and there is no reliefs sought against her. The statement is accepted. Leave to amend is granted.

The amendment to be carried out within one week from today.

2. Insofar as prayer clause (a) is concerned, learned counsel for the plaintiff invited my attention to the order passed by this Court on 13th July, 2007 in Notice of Motion No.117 of 2006 in Testamentary Petition No.742 of 2005 granting similar relief without prejudice to the rights and contentions of all the parties, including the rights of the respondent no.3 in Testamentary Petition No.297 of 2007.

3. Mr.Thakkar, learned counsel appearing for the defendant no.3 and Mr.Sharma, learned counsel appearing for the defendant no.2 have no objection to grant this relief without prejudice to the rights of their respective clients. They have also agreed that their respective clients would sign requisite documents, if any, required for effecting the order passed by this Court in terms of prayer clause (a) within two weeks from the date of learned Officer being appointed by this Court and calling upon to execute these documents. Statement is accepted. It is ordered accordingly.

4. Learned Prothonotary & Senior Master of this Court is directed to appoint an Officer of this Court to comply with the order in terms of prayer clause (a) of the notice of motion. The fees and expenses incurred by the Officer shall be borne by the applicant at the first instance. Learned Officer as may be deputed by the

Prothonotary & Senior Master of this Court shall submit a report after the order in terms of prayer clause (a) of the notice of motion is complied with. It is made clear that the relief in terms of prayer clause (a) is granted without prejudice to the rights and contentions of all the parties, including the rights and contentions of the respondent no.3 in Testamentary Petition No.297 of 2007. Upon the amounts being received in Court, the same shall be invested by the Prothonotary & Senior Master of this Court in the fixed deposit of a nationalized bank initially for a period of one year and thereafter for like periods after obtaining further orders from this Court.

5. The notice of motion is disposed of in aforesaid terms. The office is directed to place Notice of Motion No.117 of 2017 on board for marking of documents of the defendant no.3 on 8th August, 2017. The office is also directed to produce the notes of evidence along with the report of the Court Commissioner and also the original documents when the matter is placed on board for marking of documents.

6. Place the Testamentary Suit No.21 of 2009 on board for directions along with Testamentary Suit No.70 of 2006 on the same date.

(R.D. DHANUKA, J.)