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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 113 OF 2018
IN
TESTAMENTARY SUIT NO. 160 OF 2014
IN
TESTAMENTARY PETITION NO. 877 OF 2014**

Shalini Bajirao Sawant	...Plaintiff
<i>Versus</i>	
Rajesh Gopal Chawan & Ors	...Defendants

Mr MP Wamorkar, *Maravoor Wamorkar & Co., for the Plaintiff.*
Ms Armin Wandrewala, *with Chetan Mhatre, i/b Utangale & Co.,*
for the Defendant

CORAM: G.S. PATEL, J
DATED: 13th June 2018

PC:-

1. This Notice of Motion is filed by the Defendants. The first prayer is not pressed. The second prayer is to tag or club this Suit with Partition Suit No. 684 of 2014 filed by the 1st Defendant and others. That prayer will have to be granted. However, the partition Suit will have to await not only the outcome of the present Testamentary Suit No. 160 of 2014 but also the outcome of

Testamentary Suit No. 125 of 2017 filed by the 1st Defendant seeking probate of an earlier Will of the same deceased.

2. In other words, the trial sequence is: first, Testamentary Suit No. 160 of 2014 will be tried. If that succeeds, then Testamentary Suit No. 125 of 2017 automatically fails and partition Suit No. 684 of 2014 can be taken up. If the present Testamentary Suit No. 160 of 2014 fails, then Testamentary Suit No. 125 of 2017 will be taken up. The Partition Suit will have to await the outcome of Testamentary Suit No. 125 of 2017.

3. Ms Wandrewala's suggestion therefore at least to proceed with framing of the issues in the partition Suit is, I believe, unworkable. A preliminary decree cannot be passed in that Suit unless the two Testamentary Suits are determined. The result of each testamentary action will have the different result and it is also equally possible that if both Testamentary Suits fail, then the partition Suit will have to be amended to proceed as on intestacy.

4. For all these reasons, the request to frame issues in the Partition Suit will have to be deferred for the present and until further orders of the Court.

5. The Notice of Motion is disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)