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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 128 OF 2018
IN
TESTAMENTARY SUIT NO. 40 OF 2016
IN
TESTAMENTARY PETITION NO. 800 OF 2014**

Sakubai Radhakisan Aavhad Alias Sakubai Keru Palve ...Plaintiff

Versus

Prakash Devram Avhad ...Defendant

Mr Bhushan Deshmukh, for the Applicant.

**CORAM: G.S. PATEL, J
DATED: 12th September 2018**

PC:-

1. I believe this Notice of Motion will have to be allowed at least in terms of prayer clause (b). There is no question of recall of the order dated 11th April 2017. By that order, at page 106, the Court marked some documents in evidence and marked others for identification. The marking of documents for identification does not mean that they have been rejected as inadmissible or irrelevant, but merely that their reception into evidence is presently deferred. It is always open to a party to claim, at any stage before the decree, that

having regard to the evidence and material on record, a particular document marked for identification should now be fully exhibited and treated as properly led in evidence.

2. There is a very serious contest as to whether the Plaintiff, Sakubai, is an heir of the deceased and this issue has been framed as the first on the basis of Section 15(1)(b) read with Section 16(2) of the Hindu Succession Act, 1956. The defence is that there was a separation from the deceased. What consequence this has in law is a matter for trial and final arguments.

3. Evidently, the Plaintiff must be allowed the fullest latitude in adducing all available evidence in support of her case. It makes little difference that the cross-examination has begun, for it has not concluded, and there is also no doubt that the Defendant is entitled to cross-examine the Plaintiff fully on all aspects of the matter.

4. Further, the reception of these documents in evidence does not mean that the Defendant has accepted their evidentiary value or relevance. Those contentions are expressly kept open to the final hearing of the Suit. The Defendant will be entitled to ask all questions, legitimately permissible in cross-examination, to the Plaintiff on these documents.

5. Consequently, the documents marked “X1” to “X8” are now taken on record and marked Exhibit “P1/5” to Exhibit “P1/12” in evidence.

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

7. List the matter for further cross-examination of the Plaintiff, in Court, on 31st October 2018 at 3.00 pm.

(G. S. PATEL, J)