

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 303 OF 2017
IN
MISCELLANEOUS PETITION NO. 89 OF 2011
IN
TESTAMENTARY PETITION NO. 1148 OF 2008

Arvinder Pal Singh Gandhi	...Plaintiff
<i>Versus</i>	
Chitra Ravikiran Haldipur	...Defendant

Mr Prabhu Velar, *for the Applicant/Defendant.*
Mr Rajiv Narula, *with Ryan Nenezes, i/b Jhangiani Narula & Associates, for the Plaintiff.*

CORAM: G.S. PATEL, J
DATED: 1st February 2018

PC:-

1. Heard.
2. The application is to re-cast issue No. 3 of the four issues framed on 17th February 2015.
3. Issue No. 3 as originally framed read thus:

"Whether the Respondent proves that Har Kaur was not lawfully wedded wife of the deceased Mr Anup Singh Lalsingh Grover?"

4. The Applicant says that the burden of proof should be inverted and placed on the Plaintiff to prove that Har Kaur was the lawfully wedded wife of the deceased.

5. Rather than entering into the controversy as to on whom lies the burden, the issue can be simply re-framed thus:

"Whether Harkaur was the lawfully wedded wife of the deceased, Anup Singh Lalsingh Grover?"

6. All contentions as to evidentiary burden are kept open to the final hearing of the Suit.

7. The Notice of Motion is disposed of in these terms. No costs.

8. In fairness Mr Narula points out that the Commissioner previously appointed for recording evidence will need to be substituted. It is not necessary to get into the reasons for this.

9. Mr Mikhail Behl is appointed a Commissioner and is requested to record the cross-examination of the revocation Petitioner at his earliest convenience.

(a) The Commissioner is at liberty to exercise discretion under Order XVIII Rule 4(4) of the Code of Civil Procedure, 1908, to note the demeanour of the witnesses where necessary.

(b) All cross-examination shall be conducted strictly in question and answer form.

- (c) The Commissioner will also be at liberty to direct that the whole or any part of the cross-examination should be video recorded for later reference of the court. Should that be done, the original audio visual recording will be submitted along with the Commissioner's Report to the Registry.
- (d) Liberty to the parties as also to the Commissioner to apply in case of difficulty.
- (e) All re-examination will be conducted only in court.
- (f) Costs of the commission shall be borne equally by the parties.
- (g) Parties shall also pay costs of Rs. 500/- per hearing to the Court Clerk who attends the Commission with Court Papers. This is required since these clerks attend the commission in addition to their regular duties and outside their normal working hours;
- (h) The Commissioner is not to permit any applications for adjournment on dates previously fixed, except where absolutely unavoidable. Counsel's inconvenience or unavailability does not constitute such unavoidability.

10. List the matter on 10th April 2018 for a status report including as to progress before the Commissioner.

(G. S. PATEL, J)