

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

NOTICE OF MOTION NO. 1600 OF 2017
IN
SUIT NO. 106 OF 2016

Mitesh Doshi

...Applicant.

In the matter between

Masumi J. Nagrecha

...Plaintiff.

vs.

Mitesh Doshi and anr.

...Defendants.

Mr. Ruchir Dholakia for the Plaintiff.

Mr. P. Ranjan I/by Halai & Co. for the Defendants and Applicant in Notice of motion.

CORAM : R.D. DHANUKA, J.

DATE : 01st March, 2019

PC :

1. This notice of motion is preferred by the applicant for rejection of the plaint against defendant No.1 under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 or in the alternative for stay of the present suit under Section 10 of the Code of Civil procedure, 1908. It is contended that the plaintiff has prayed for a declaration that the father of the plaintiff and defendant No.1 i.e. late Shri. Kirit Joshi and their mother Jyoti Kirti Doshi died intestate and for further declaration that the alleged will of the father of the plaintiff and defendant No.1 is

void. It is not in dispute that defendant No.1 has propounded a Will of late Shri. Kirti Doshi and has already filed Testamentary Petition No.510/2015 which is converted into Testamentary Suit No.211/ 2015. It is not in dispute that the plaintiff herein has already filed caveat in the said testamentary petition filed by the executor of the alleged Will which is pending.

2. A perusal of the prayers in Suit No.1600 of 2017 further indicates that in addition to above referred prayers, the plaintiff also seeks partition of the properties of the estate of the father and mother and seeks $\frac{1}{2}$ share in respect thereof. So far as prayer clause (b) is concerned, since the plaintiff herein has filed caveat in the testamentary suit challenging the will of the father, prayer clause (b) does not survive and it is accordingly rejected.

3. So far as prayer clause (a) and (c) are concerned, they are connected with the pending testamentary suit filed by the defendants. In view of the above, the Suit No.106 of 2016 can be decided along with Testamentary Suit No.211/2015 and to be heard after disposal of the suit i.e. Testamentary Suit No.211 of 2015. Notice of Motion NO.1600 of 2017 is disposed off in aforesaid terms. No order as to costs.

4. Notice of Motion No.997/2016 be listed for disposal on 19.3.2019.

(R. D. DHANUKA, J.)