

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

**NOTICE OF MOTION NO.223 OF 2018
IN
TESTAMENTARY SUIT NO.8 OF 2018**

Serika Lal : Applicant/Org. Defendant.

In the matter between

**Devika Sunil Jamdar : Plaintiff
versus**

Serika Lal alias Serika Aggarwal : Defendant.

**Mr. P Ranjan i/by Halai & Co. for the Applicant/Defendant.
Mr. Rashmin Khandekar, Mr. Prateek Pai a/w Mr. Shashwat Rai i/by
Keystone Partners for the Plaintiff.**

**CORAM : R. D. DHANUKA
DATE : 28th January 2019**

P.C.

1 By this notice of motion the Defendant/original Caveator seeks an order and/or direction to delete/strike off paragraphs mentioned in prayer clause (a) of the notice of motion which are the paragraphs of the affidavit of examination in chief filed by the Plaintiff on the ground that the same are irrelevant, in nature of pleadings and devoid of evidence having any evidential value.

2 The learned counsel Mr. P Ranjan appearing for the Applicant invited my attention to those paragraphs from the affidavit in lieu of examination in chief and also the issues framed by this Court on 02/05/2018.

It is the submission of the learned counsel for the applicant that out of several properties mentioned in Schedule-I appended to the testamentary petition filed by the Plaintiff in so far as immovable property mentioned at Sr. No.1 and movable property mentioned at Sr.No.3, the caveator has exclusive right, title and interest in respect of those two properties. He submits that there is no deposition of the witness in so far as these two properties are concerned. He submits that several irrelevant paragraphs can be noticed by this court in the affidavit in lieu of examination in chief which are not relevant for the purpose of deciding the issues framed by this Court.

3 The learned counsel for the Plaintiff on the other hand invited my attention to the issues framed by this Court and more particularly issue Nos.2 and 3 which are reproduced herein under :-

2 Whether the Defendants prove that they are entitled to the Letters of Administration instead of the Plaintiff?

3 Whether the Defendants prove that Letters of Administration should not be granted exclusively to the Plaintiff but should be granted to the Defendants or, at any rate, jointly to the Plaintiff and the Defendants?

4 It is submitted that the testamentary court cannot decide the issue of title raised by the Defendant in respect of these two properties. The learned counsel would submit that in view of the issues framed by this Court as to who

is entitled to the Letters of Administration, the Plaintiff was required to place reliance on the various paragraphs of the affidavit in lieu of examination in chief of the evidence as to why she should be granted Letters of Administration in stead of Defendant. In that respect the Plaintiff has given her educational background and the various activities in the field of medicines, to convince this Court as to how she was close to the father and why the Plaintiff should be granted Letters of Administration and not the Defendant.

5 A perusal of the aforesaid two issues framed by this Court clearly indicates that both the parties are canvassing before this Court as to who should be granted Letters of Administration in exclusion of each other.

6 It is also the case of the Defendant that the Plaintiff shall not be granted any Letters of Administration in respect of the two properties which are described at Sr.No.1 in the list of immovable property and at Sr.No.3 in the list of movable properties since the Defendant claims exclusive right in respect of those properties.

7 In so far as title issue raised by the Defendant in the affidavit in support of caveat is concerned, the Hon'ble Supreme Court as well as this court in catenta of decisions have held that the issue of title cannot be decided by the testamentary court. The Defendant has not filed any separate suit for

adjudication of the title in respect of those two properties which are described at Sr.No.1 in the list of immovable property and at Sr.No.3 in the list of movable properties.

8 A perusal of the affidavit in lieu of the examination in chief filed by the Plaintiff indicates that several paragraphs in the affidavit in lieu of examination in chief deal with the educational qualification of the Plaintiff, various activities of the Plaintiff in the field of medicines and about her closeness to the deceased father. In my view, these paragraphs of evidence are to demonstrate as to why the Plaintiff should be exclusively granted Letters of Administration instead of Defendant. A perusal of the affidavit in support of the notice of motion and in particular paragraph 8 thereof indicates that the Defendant seek striking of those paragraphs on the ground that the same are irrelevant and do not have evidentiary value in the circumstances of the present case.

9 In my view, all these depositions since are made in the affidavit to prove the case of the Plaintiff in terms of the Issue Nos.2 and 3 framed by this Court, they would be of some relevance for the purpose of deciding as to whether the Plaintiff shall exclusively be granted Letters of Administration instead of Defendant or not. I am thus not inclined to delete any paragraph of the affidavit dated 22/06/2018 in lieu of examination in chief.

9 In these circumstances, after the evidence is recorded, this Court can consider the evidentiary value of those paragraphs in toto and not at this stage. This notice of motion is devoid of merits and the same is accordingly dismissed. The Defendant is directed to file statement of admission and denial in respect of the documents proposed to be relied upon by the Plaintiff within one week from today. The Plaintiff is directed to file statement of admission and denial in respect of the documents proposed to be relied upon by the Defendant simultaneously. Place the matter on board for marking of documents on 12/02/2019.

[R. D. DHANUKA, J]