

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
INTERIM APPLICATION NO. 484 OF 2021
IN
TESTAMENTARY SUIT NO. 113 OF 2018
IN
TESTAMENTARY PETITION NO. 438 OF 2002**

Niranjan B Shah	...Applicant
<i>In the matter between</i>	
Bipin B Shah	...Plaintiff
<i>Versus</i>	
Lalita B Shah & Anr	...Defendants

Mr Piyush Raheja, with Sahil Gandhi and Nupur Desai, i/b
Markand Gandhi & Co, for the Applicant/Defendant No.2.
Ms Dipti Shah, with Neuty Thakkar, i/b Tushar Goradia, for the
Plaintiff.

CORAM: G.S. PATEL, J
DATED: 17th September 2021

PC:-

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RAMCHNDRA
SANKPAL

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1. The 2nd Defendant is present online. His presence is noted.
Mr Raheja states that the 1st Defendant has passed away. The
Plaintiff's evidence is complete.

2. The 2nd Defendant has filed an evidence affidavit, an affidavit of documents and compilation of documents. Three documents are denied.
3. Mr Raheja tenders a list. This runs to 46 documents.
4. The documents at Serial Nos. 15, 17 and 23 are denied.
5. The document at Serial No. 15 is a letter of 22nd July 1985 from the sister of the 2nd Defendant to the father of the 2nd Defendant. The document will need to be proved and is marked “X1” for identification.
6. The document at Serial No. 17 is a drawing plan. This will need to be proved and is marked “X2” for identification.
7. The document at Serial No. 23 is another Will of the father. It cannot be proved in this fashion. It is marked “X3” for identification.
8. The other documents will be marked in evidence as **Exhibits “D2-1 to D2-43”**. Wherever the document is not fully admitted, i.e. its contents are denied, this will be subject to proof of correctness of its contents.
9. Mr Vishal Raman, learned Advocate, is requested to take up the assignment as Commissioner to record the cross-examination evidence of the 2nd Defendant. This will have to be done at the

residence of the 2nd Defendant following all safety protocols for COVID-19. If the 2nd Defendant requests a break given his age and health, this accommodation will be made available to him.

- (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-examinations 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 16th November 2021 for a status report including as to progress before the Commissioner.

11. The statement of admission and denials by the Plaintiff is taken on record and marked "Z1" for identification.

12. The Interim Application is disposed of in these terms.

13. All concerned will act on production of a digitally signed copy of this order.

(G. S. PATEL, J)