

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION

INTERIM APPLICATION NO. 474 OF 2023

IN

SUIT NO. 172 OF 2014

IN

PETITION NO. 1180 OF 2014

Mrs. Ashrumati Bhogilal Dalal

alias Ashrumatiben

...Deceased

Kunjata Rajendra Shah & Anr.

...Applicants

IN THE MATTER BETWEEN

Tushar Bhagwan Khaire

...Petitioner

Vs

Kunjata Rajendra Shah

...Respondents

Mr. Hrushi Narvekar i/by E.A. Sasi for Applicants in IA/474/2023 and for Defendant in TS/172/2014.

Mr. Gaurav Chaubey i/b R. S. Chaubey for Plaintiff in TS/172/2014 and for Defendant in IA/474/2023.

Mr. D. R. Mishra for Defendant in TS/15/2011.

CORAM : ARIF S. DOCTOR, J.

(In Chamber)

DATE : 28th March, 2023

P.C. :

1. Present Interim Application is taken for the substitution of the Court Commissioner appointed vide an order 20th October, 2021. Since substitution has been sought by consent of the parties. It is not necessary to get

into the merits of the Application, thus it is expressly made clear that this Court has not express any opinion on the merits of the Application or the contentions taken therein. The Court Commissioner is being substituted purely by consent of the parties.

3. In view thereof, by consent, Mr. Jahaan M. Dastur is appointed as a Commissioner, details of whom are as follows:-

Name:	Shri. Jahaan M. Dastur
Office:	Chambers of Zal Andhyorojina, 302, Mistry Mansion, MG Road, Mumbai-400 001.
E-mail ID :	jahaandastur@gmail.com
Mob. No. :	9820276221

- 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.

4. Interim Application is accordingly disposed of.

5. It is made clear that the Cross-examination of PW-1 shall be completed within a period of two weeks from today.

6. Place the matter for direction on 11th April, 2023.

(ARIF S. DOCTOR, J.)