

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

INTERIM APPLICATION NO. 3648 OF 2023

IN

TESTAMENTARY SUIT NO. 12 OF 2009

Sandra Maria Fernandes

...Applicant

IN THE MATTER BETWEEN :

Sandra Maria Fernandes

...Plaintiff

Versus

Trevor Ashok Dominic D'Lima

...Respondent / Defendant

- Adv. Harjot Singh Alang i/b Raval Shah & co., for Applicant / Plaintiff.
- Adv. Vinay Manohar Bhate, for Defendant.

CORAM : MANISH PITALE, J.

DATE : 08th MAY, 2024

P. C. :

1. By this application, the applicant prays for documents marked for identification in the order dated 20th June, 2023, as X-1, X-2 and X-3, as exhibits subject to proof of the said documents.

2. This Court has perused the documents with the assistance of the learned counsel for the parties. The objection raised in the reply affidavit on behalf of the defendant is that there is no substratum laid down by the plaintiff for leading secondary evidence in the context of the said documents. He refers to Sections 63 and 65 of the Indian Evidence Act.

3. This Court has perused the documents. The document at X-1 is said to be a letter addressed by the deceased to Secretary / Chairman of the co-

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SHRINIVAS
MALANI

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operative housing society dated 06th November, 2001. It is a photocopy of the purported original letter submitted to the society. X-2 and X-3 are original / copies / duplicates of police complaints dated 19th November, 2001 and 25th November, 1997, said to have been submitted by the deceased before the police station. There is no acknowledgment on any of the three documents, in the context of X-1 by the co-operative housing society and in the context of X-2 and X-3 by the concerned police station. In this situation, the learned counsel for the plaintiff sought to rely upon Exhibit “P-19” to contend that the documents marked as Exhibit “P-19” pertained to the said NC complaints lodged by the deceased against the defendant.

4. A perusal of the said Exhibit shows that the dates do not match with the documents marked X-2 and X-3. Therefore, the said contention can also not come to the aid of the plaintiff (applicant).

5. In the light of the material available on record, this Court is not convinced that the documents marked for identification as X-1, X-2 and X-3 can be marked as exhibits, even subject to proof.

6. In view of the above, the application is dismissed.

7. At this stage, the learned counsel appearing for the plaintiff submits that the time period for the Court Commissioner to submit his report along with notes of evidence may be extended. He submits that Exhibit “P-

27” and “P-29” have been marked as exhibits subject to proof of contents thereof. In that light, the learned counsel for the plaintiff submits that permission may be granted to conduct examination-in-chief before the Court Commissioner in respect of the two exhibits i.e. “P-27” and “P-29”.

8. In the interest of justice, the prayer is granted. The defendant is entitled to cross-examine the witness in that regard.

9. The Court Commissioner is granted further time of eight weeks to submit report alongwith notes of evidence.

10. List for further directions on **08th July, 2024.**

(MANISH PITALE, J.)