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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 21 OF 2015**

IN

CAVEAT NO. 1 OF 2015

IN

TESTAMENTARY SUIT NO. 67 OF 2014

IN

TESTAMENTARY PETITION NO. 360 OF 2014

Dr. Veena Ramchandra Patel

...Plaintiff

Versus

Bakhtawar Arzan Ghadially

...Caveator

**Mr. Mohammed Akram, i/b Savita Pattni, for the Plaintiff.
Mr. B.G. Saraf, for the Caveator.**

CORAM: G.S. PATEL, J

DATED: 16th June 2015

PC:-

1. The Notice of Motion seeks dismissal of the Caveat *inter alia* on the ground that the Caveator, one Bakhtawar Arzan Ghadially, a Parsi Zoroastrian, is not an heir of the Testator; that the Caveator has in her Affidavit in Support of the Caveat claimed an interest or a title adverse to that of the deceased; and that the Caveat and

Affidavit in Support are beyond time without accompanying application for condonation of delay.

2. The Petition for Letters of Administration with Will annexed is brought by one Veena Ramchandra Patel. She is not related to the Testator, one Dinshaw Hormusji Gandhi, who died in Mumbai on 7th December 2013. Veena Patel propounds a Will dated 27th December 2009. In her Petition, the Petitioner claims that the Testator was a widower at the time of his death and was not survived by any lineal descendants. She also claims that there were no agnates or cognates and, further, that she was unaware of any relatives of the deceased Testator. Service was, therefore, said to be effected by publication through newspapers. It seems this was done on 6th April 2014 in Free Press Journal and Jam-e-Jamshed.

3. Paragraph 9 of the probate Petition is of some significance and reads thus:

“The deceased died as Widower. The Wife of the Deceased viz. Homai Dinshaw Gandhi died on 17th August 2006. A copy of the Death Certificate of Homai Dinshaw Gandhi is annexed hereto and marked as **Exhibit “E”**. The parents of the deceased are predeceased the deceased. The Deceased died issueless. There are no legal heirs from his father and mother side. The whereabouts of any remote relatives, cognates or agnates, if any, of the Deceased, as also mentioned under Sections 54 and 55 of Indian Succession Act 1925, are not known. The Petitioner, as sole legatee, is, therefore, separately taking steps for publication of Citation in two newspapers.”

4. For the record, I must note that a Caveat dated 17th April 2014 was filed by one Neville Sam Daruwalla and which I had occasion to dismiss on 19th November 2014.

5. The present caveat was filed on 15th December 2014. The Caveator does not say when it is that she learned of the probate Petition that has been filed or how. She does, however, say that she is related to the deceased and she is the testator's wife's male cousin's daughter. This is not a matter that can be decided at the threshold in this fashion without evidence being led.

6. In the rest of her affidavit in support, the Caveatrix raises various disputes about the deceased's mental capacity, authenticity of the Will and claims that the Will is forged. She also says that some of the properties mentioned in the Will did not belong to the deceased.

7. I do not think that it is a correct proposition to say that a Caveator cannot dispute a Testator's title, or that any such challenge disentitles a Caveator from maintaining a Caveat and opposing the Petition. It is one who seeks representation to the estate, by means of probate or letters of administration (with or without will annexed) who cannot set up a title adverse to that of the deceased. The reason is obvious: one enjoined with the administration of the estate cannot dispute the deceased's title to it.

8. Mr. Akram, Learned Advocate for the Petitioner, relies on a decision of the learned Single Judge of this Court in *Eruch Rustom*

*Irani v Limji Kaikashree Panday*¹ to say that even a caveator cannot dispute the testator's title. This decision is actually against the Petitioner. The facts in that case were clearly distinguishable. The caveator there was not related to the deceased testator.² He did not even claim to be related to the testator. The learned single Judge observed that the caveator "has no interest in the estate to be derived from the deceased in inheritance". What the caveator effectively said therefore was that since he, the caveator, had title to certain property, he was entitled to oppose the grant of probate to the will that purported to deal with that very property. The learned single Judge held that in such a case, where the caveator had no caveatable interest, and since probate proceedings did not decide questions of title, the caveat could not be maintained. I am in most respectful agreement with that view. The learned single Judge in *Eruch Irani* did not hold that even where the caveator claims to be related to the deceased and, on that basis, to have a caveatable interest, he can never allege that certain properties did not belong to the testator. Indeed, a caveator with a caveatable interest can do so; and he can do so to show, *inter alia*, that the will propounded is vitiated by undue influence, coercion or for want of fitness of mind. He cannot expect an adjudication of title in such proceedings, but that is all.

9. What the present Caveatrix says is that she is related to the deceased. She says how she is so related. She then goes on to allege that the bequest of a certain property could not have been made by the testator. This is not a ground for dismissal of the caveat. It is a

¹ 1993(1) Bom.C.R. 340

² Paragraphs 6 and 8 of the report.

ground urged in support of the contention that the will is not authentic and genuine.

10. In my view, it would be wholly unsafe and unsound to dismiss such a Caveat at this stage, particularly in view of the alleged relationship (or lack thereof) between the Petitioner and the Testator.

11. The Notice of Motion is dismissed with no order as to costs.

12. List the Suit for framing issues on Friday, 19th June 2015.

(G. S. PATEL, J.)