

*Atul*

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
TESTAMENTARY AND INTESTATE JURISDICTION  
NOTICE OF MOTION NO. 32 OF 2015  
IN  
NOTICE OF MOTION NO. 93 OF 2014  
IN  
TESTAMENTARY SUIT NO. 36 OF 2014  
IN  
TESTAMENTARY PETITION NO. 1581 OF 2013**

|                       |              |
|-----------------------|--------------|
| Arun Madhukar Tupe    | ...Plaintiff |
| <i>Versus</i>         |              |
| Sainath Madhukar Tupe | ...Defendant |

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**Mr. T.G. Vora, i/b Mrs. Bina Suresh Shivhare, for the Plaintiff.**  
**Mr. Uday Jaguste, for the Defendant.**

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**CORAM: G.S. PATEL, J**  
**DATED: 15th July 2015**

**PC:-**

1. Heard.
  
2. I passed an order dated 13th January 2015 in Notice of Motion No. 93 of 2014. The present Suit is for Letters of

Administration by a son of the deceased. A Caveat was entered by another son. The Caveator's case is that the deceased left a testamentary writing. Specifically, he says that the document in the form of a nomination was a testamentary instrument. Till the date of my order dated 13th January 2015, Caveator had taken no steps to prove that testamentary writing. I, therefore, made the Plaintiff's Notice of Motion absolute, discharging the Caveat.

3. It seems that the Defendant/Caveator has now filed Testamentary Petition No. 320 of 2015 which, on a Caveat being entered therein by the present Plaintiff, Arun Madhukar Tupe, has now been renumbered as Testamentary Suit No. 85 of 2015. Consequently, my order of 13th January 2015 can no longer stand. It would have the effect of dismissing the Defendant's independent Testamentary Suit. Hence, the order dated 13th January 2015 is recalled.

4. The Notice of Motion is made absolute in terms of prayer clause (a). There will be no order as to costs.

**(G. S. PATEL, J.)**