

*Shephali*

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
TESTAMENTARY AND INTESTATE JURISDICTION  
NOTICE OF MOTION NO. 54 OF 2014  
IN  
TESTAMENTARY SUIT NO. 13 OF 2014  
IN  
TESTAMENTARY PETITION NO. 233 OF 2013**

|                                                                  |              |
|------------------------------------------------------------------|--------------|
| Chandulal Ratilal Bhurabhai Soni Alias<br>Chandulal Ratilal Soni | ...Plaintiff |
| <i>Versus</i>                                                    |              |
| Umesh Ratilal Soni                                               | ...Defendant |

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**Mr. Denzil D'Mello, with Ms. Geeta Sonawane, for the Applicant/  
Plaintiff.**  
**Mr. Zubin Behramkamdin, i/b Rajani Agale for the Defendant.**

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**CORAM: G.S. PATEL, J  
DATED: 28th July 2015**

**PC:-**

1. Heard Mr. D'Mello, learned Advocate for the Plaintiff and Mr. Behramkamdin, learned Counsel for the Defendant.
2. This is the Plaintiff's Notice of Motion for dismissal of the Caveat. A few facts are necessary: one Ratilal Bhurabhai Soni was

married to one Gomtiben alias Godavariben. They had seven sons and five daughters. All the sons and daughters are married. Ratilal Soni resided at Nairobi. He passed away on 29th September 1963. He was survived by his widow Godavariben and their seven sons and five daughters. Godavariben herself passed away in July 1964.

3. Ratilal had, it is claimed, executed a Will dated 12th October 1961 in Nairobi, Kenya. Under this Will, he appointed his widow Godavariben, their elder son Dhirajlal and their second son Chandulal as executors. The Will contains a bequest of movables, personal belongings and certain other assets to Godavariben. The remaining assets were to be divided amongst Ratilal's seven sons and widow in equal shares after the youngest of the seven sons attained 21 years of age. A provision was made in the Will that should any son predecease Ratilal, that predeceased son's children and widow would succeed to his share.

4. Dhirajlal, the eldest son, passed away on 13th July 2002. Chandulal, the second son; Dinesh, the fourth son; and Anil, the third son, executed a writing dated 30th July 1967 in London. This is alleged to be in the nature of a renunciation of their rights in the estate. In addition, Chandulal, the second son expressly renounced his executorship in writing. This is of some consequence because it is today Chandulal who is the Petitioner and who seeks Letters of Administration with an authenticated copy of Ratilal's Will annexed. He admits to his renunciation as an executor *inter alia* by saying that this was under duress or coercion. It is not necessary, in my view, at this stage to deal with this any further for the purposes

of this Notice of Motion. That is a matter that will undoubtedly be taken up at an appropriate time.

5. Dhirajlal, the eldest son of Ratilal, accepted executorship. He sought probate in the Supreme Court at Nairobi in Case No. 229 of 1964. Grant was issued on 9th December 1964 in Dhirajlal's favour. That grant is said to have reserved the right of Chandulal to come in and apply for probate, though the Defendant disputes this too. In any case, Chandulal never did join in the probate granted to Dhirajlal. Dhirajlal passed away on 14th June 2003; even then, Chandulal did not claim any right of executorship. This is to be appreciated while bearing in mind that his renunciation is of 30th July 1967. It appears that present Petitioner, Chandulal, applied to the Supreme Court in Kenya, and on 1st March 2011 obtained a grant of probate in his favour to Ratilal's Will of 1961.

6. Mr. D'Mello's case is that if the Caveator who is the seventh and youngest son of Ratilal wishes to challenge the probate, he must do so before the Court in Kenya. He cannot do so here by opposing the present Petition. On the other hand, Mr. Behramkamdin points out that the very locus of the Petitioner is questioned, especially in light of his earlier renunciation. It is also the Caveator's specific case that the order dated 1st March 2011 obtained by the present Petitioner in Kenya was an *ex parte* order obtained by fraud.

7. It seems that in certain further proceedings taken out in Kenya the grant of 1st March 2011 was revoked by an order dated 28th October 2013. That revocation was itself challenged and the

Court in Kenya, by an order dated 17th March 2014, found that it was the order of revocation that was required to be set aside.

8. The Defendant also points out that the Plaintiff is not, even on a plain reading of the Will, the sole executor as he claims. Clause 7 of the Will appoints all the testator's sons over 21 years as his executors. The other oddity is that although the Petition is for Letters of Administration with a copy of an authenticated copy of the Will annexed, it is brought by Chandulal describing himself as the sole surviving executor. This is not explained at all in the petition.

9. It is difficult in these circumstances to see how the contentions of the Caveator should be dismissed or rejected *in limine*. The grant in favour of either Dhirajlal and later in favour of the present Petitioner, Chandulal, clearly does not extend to the properties and estate in India. It is for that reason that the present Petition is brought seeking Letters of Administration with an authenticated copy of the Will annexed. I do not think it would be possible to shut out Defendant's case entirely given that the conduct of the Petitioner itself seems to raise many more questions than it answers. All of this requires evidence, not least in relation to whether the grant in Kenya was with or without service of a citation and, if not, the effect of such a grant. The Defendant must be given an opportunity of not only placing his own evidence but of cross-examining the Plaintiff. The request for shutting out the Defendant who undoubtedly has a caveatable interest, and keeping out his evidence is not one that can be accepted in a matter such as this. This is not a case where the Caveator has no caveatable interest or

does not in fact challenge the application for grant. To the contrary: this is a case where the Caveator impugns the Plaintiff's right to even bring or maintain the present Application.

10. While the Defendant may take whatever steps he thinks necessary in Kenya, the orders of that Court cannot oust his challenge in this Court. This is also something of a Catch-22 situation: if the present Notice of Motion is allowed, the shutting out of the Defendant will undoubtedly impact his standing in any proceedings in Kenya; the converse, however, is not true; for the Defendant may challenge the applications for probate or the grants (as the case may be) in either or both jurisdictions.

11. In this view of the matter, the reliefs sought in this Notice of Motion cannot be granted. The Notice of Motion is dismissed with no order as to costs.

12. List the Suit for framing issues on 3rd September 2015.

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