

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 62 OF 2014
IN
TESTAMENTARY SUIT NO. 129 OF 2013
IN
TESTAMENTARY PETITION NO. 773 OF 2011**

Govind Ganesh Soman & CA Madhuri Ram Sabnis	...Plaintiff
<i>Versus</i>	
Sandeep S. Deshpande	...Defendant

**Mr. Pradeep Sancheti, Senior Advocate, with Mr. Mayur
Khandeparkar & Mr. Omprakash Jha, i/b M/s. The Law Point,
for the Plaintiff.**

**Mr. Shyam Mehta, Senior Advocate, with Mr. V. V. Kanade and
Ms. Teressa Daulat, i/b M/s. Divya Shah Associates, for the
Defendant.**

**CORAM: G.S. PATEL, J
DATED: 26th June 2015**

PC:-

1. Heard Mr. Sancheti, learned Senior Advocate for the Plaintiff/Applicant, and Mr. Mehta, learned Senior Advocate on behalf of the Defendant.

2. This is the Plaintiff's Notice of Motion for dismissal of the Defendant's caveat in this Petition for Letters of Administration.

3. Before proceeding further I must note that over the past several months, I have made every effort to bring the parties to a settlement. That has not materialized.

4. The Petition for Letters of Administration is brought by one Madhuri Ram Sabnis through her constituted attorney. The Petition seeks Letters of Administration to the property and credits of the Petitioner's father one Sadashiv Krishna Deshpande, who died in Mumbai on 6th October 2010. According to the Petitioner, he died intestate. The Petitioner lives abroad; hence, it is brought through her constituted attorney.

5. A caveat was entered with an accompanying Affidavit in Support by the Petitioner's brother Sandeep Sadashiv Deshpande. The Petitioner has, therefore, as required by our Rules, been renumbered as Suit. It is pending trial.

6. Mr. Sancheti's submission, briefly stated, is that since there are admittedly only two heirs, viz., the Plaintiff and the Defendant, the caveat should be dismissed and Letters of Administration should be ordered to be issued either to the Plaintiff or to the Defendant or some other person as an Administrator.

7. I must note, at this stage, that one of the grounds taken in the Affidavit in Support of the Caveat is that the deceased left a writing, which the Defendant claims is in the nature of a

testamentary instrument, but of which he has neither sought probate nor attempted to have proved as such testamentary instrument. It is on this basis that Mr. Sancheti submits, on the strength of a large number of authorities that I do not think necessary to deal with at this stage, that the caveat as it stands ought to be dismissed. Mr. Sancheti submits that under Section 218(2) of the Indian Succession Act, there is a discretion vested in the Court to grant of Letters of Administration to one or more persons; and, in a situation like this, where the Defendant himself has applied neither for Letters of Administration nor probate, Letters of Administration should be immediately granted. He says the Plaintiff is agreeable to the Letters of Administration being granted to either of the parties, or to them both, or to a third party appointed as an administrator. It is well established that a Court will not ordinarily order issue of a joint grant to the two parties who are litigating against each other although it may issue Letters of Administration to the opposite party.

8. The deceased left considerable assets in Mumbai, the principal one being a flat now under redevelopment. The Plaintiff herself does not live in India and this is yet another reason why Mr. Mehta opposes the Petition. Mr. Mehta also points out that there is simultaneously a pending partition Suit No. 2358 of 2011 in the Bombay City Civil and Sessions Court. That Suit is even now tried with the present Plaintiff under cross-examination.

9. I do not think that it is possible in these state of affairs to hold that caveat must compulsorily and necessarily be dismissed at an interim stage. That is undoubtedly a matter of discretion. I do not

believe that there is any authority for the proposition that a Court must exercise its discretion in favour of the Plaintiff on such an application. To allow this application would necessarily have the effect of completely shutting out the Defendant / Caveator without any opportunity of being heard on the merits of his case, whatever they may be. Mr. Sancheti asks that I address myself to that very issue, viz., the merits of the defence, to assess it and to find it, without issues, without trial, without evidence and without a hearing on all that material, to find the defence wholly wanting. However tempting it may be cut short a matter and take one small step to reducing pendency, I do not think this is prudent or advisable. The Defendant has, admittedly, a caveatable interest. He has entered a caveat and filed an Affidavit in Support. He has entered an opposition to the petition. Whether his case is good or bad will have to be tested. That, surely, is the right of the Defendant.

10. The pendency of the partition suit (filed by the present Plaintiff) in the City Civil Court is another reason to reject this application. That suit is being opposed. The Plaintiff is under cross-examination. The parties' respective stands in that suit might well have a bearing on the present one. Conversely, allowing the present Notice of Motion as Mr. Sancheti suggests might have an immediate and obvious impact on the partition suit.

11. The Notice of Motion is dismissed. There will be no order as to costs.

12. It goes without saying that this order will not in any manner affect the pending proceedings in the partition Suit between the parties in the City Civil Court.

(G. S. PATEL, J.)