

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 2 OF 2015
IN
TESTAMENTARY SUIT NO. 148 OF 2014
IN
TESTAMENTARY PETITION NO. 491 OF 2012**

Fatema Hussain Shaikh through her Constituted
Attorney Mr. Sayyed Ahmed Hussain

...Applicant

In the matter between

Fatema Hussain Shaikh through her Constituted
Attorney Mr. Sayyed Ahmed Hussain

...Plaintiff

Versus

Mrs. Seema Abdul Hamid Attarwala

...Caveatrix

Mr. B. G. Saraf, for the Plaintiff.

**Mr. Vikas Singh, a/w Ms. Gargi Ankola, i/b M/s. Lambay & Co., for
the Caveatrix.**

CORAM: G.S. PATEL, J

DATED: 24th June 2015

PC:-

1. The Notice of Motion by the Petitioner seeks dismissal of a Caveat filed by one Mrs. Seema Abdul Hamid Attarwala.

2. The Petition is for Letters of Administration to the property and credits of one Shri. Hussain Chotu Miyan Shaikh, who died in Mumbai on 10th October 2011. The Caveatrix is admittedly not one of the heirs of the deceased. The only ground taken in the Affidavit in Support of the Caveat is that the Caveatrix acquired title to a residential flat being Flat B/601, 6th floor, Zia Apartment Co-operative Housing Society, 264 Bellasis Road, Mumbai 400 008 under a Sale Deed dated 3rd November 2011 from some of the heirs of the deceased. In other words, the dispute raised in the Caveat is as to title to this flat.

3. The only question in a petition for Letters of Administration is whether or not the Petitioner is entitled to such a grant. No question of title to any property is or can be decided in these proceedings. It is abundantly clear that the grant of Letters of Administration does not confer title of any of the heirs if the deceased lacked title to the property. Therefore, even if the Petition ultimately succeeds, merely by virtue of the grant, the Petitioner will not acquire any title to any of the properties in question, including this flat in particular. The Petitioner will need to adopt appropriate civil proceedings to establish his title. Equally, it is open to the Caveatrix to adopt appropriate civil proceedings for a declaration as to her own title to that property. These questions are specifically kept open and it is once again clarified that they will not be decided and are not the subject matter of the present testamentary proceedings. All rights and contentions of the Caveatrix are expressly kept open in that behalf.

4. In view thereof, the Notice of Motion is made absolute in terms of prayer clause (a). The Caveat filed by the Caveatrix stands discharged.

(G. S. PATEL, J.)