

SHEPHALI

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
TESTAMENTARY AND INTESTATE JURISDICTION  
TESTAMENTARY SUIT NO. 24 OF 2015  
IN  
TESTAMENTARY PETITION NO. 926 OF 2013  
WITH  
NOTICE OF MOTION NO. 162 OF 2016  
WITH  
NOTICE OF MOTION (L) NO. 263 OF 2016**

|                        |              |
|------------------------|--------------|
| Amar Brijkishore Gupta | ...Plaintiff |
| <i>Versus</i>          |              |
| Ashok Gupta            | ...Defendant |

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**Mr. Denzil D'Mello**, *a/w Ms. Geeta Sonawane, for the  
Petitioner/Applicant in NMT/162/16 and for Respondent in  
NMTL/263/16.*

**Mr. B. G. Saraf**, *a/w Aniruddha Lad, i/b Benny Joseph Law Offices,  
for the original Defendant/Applicant in NMS/263/16 and for the  
Respondent in NMT/162/16.*

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**CORAM: G.S. PATEL, J**  
**DATED: 26th September 2016**

**PC:-**

1. This is one of those cases where the Respondent has done almost everything except the right thing.

2. I have before me two Notices of Motion. Notice of Motion No. 263 of 2016 is filed by one Mr. Ashok Gupta, who is personally present in Court. Notice of Motion No. 162 of 2016 is filed by one Mr. Amar Gupta.

3. The Petition was originally filed for probate of the Will of Meharchand Laburam Gupta by his son Baldev Meharchand Gupta. The Will appoints Baldev Gupta and Ashok Gupta as executors. Ashok Gupta did not join in the application for probate. His rights were reserved to him to come in and apply for probate at a later stage.

4. Ashok was not only a named executor but also a beneficiary under the Will. He was, therefore, served with a regular citation. Perhaps unmindful of it dual capacity, Ashok Gupta went ahead and filed a Caveat. I will come to the contents of this Caveat shortly. In the meantime, Baldev Gupta passed away and one Amar Brijkishore Gupta also claiming to be a beneficiary under the deceased's Will filed Chamber Summons No. 27 of 2016 seeking impleadment as a Petitioner and for conversion of the Petition into one Letters of Administration with Will annexed. I allowed that Chamber Summons on 20th June 2016.

5. This is something of a dilemma. Ashok Gupta wears two hats, one as an executor and one as a beneficiary. So long as he was an executor without renunciation, he would surely be entitled to continue the Petition for probate. The difficulty was that he had already filed a Caveat although he was an executor. The 20th June

2016 order therefore allowed the conversion of the Petition into one for Letters of Administration with Will annexed.

6. Ashok Gupta now says that he has withdrawn or seeks to withdraw his Caveat. He now accepts the Will. In his Notice of Motion No. 263 of 2016 he says that it is he who should be made the Plaintiff/Petitioner and that the Petition should be reconverted into one for probate. Amar Gupta, on the other hand, the present Petitioner/Plaintiff in what is now a Petition for Letters of Administration with Will annexed, seeks firstly the discharge of Ashok Gupta's Caveat; secondly, a declaration of his having renounced executorship; third, the dispensation of service of a special citation to accept or renounce executorship on Ashok Gupta; and of course finally, that the Petition then be allowed to be as an uncontested one.

7. In order to address this, I must have a look at what it is that Ashok Gupta has said in his Caveat. If there is indeed a challenge to the Will in that Caveat, then, obviously, Ashok Gupta cannot be allowed to continue as an executor. It is of little consequence what Ashok Gupta now says he intended by that Affidavit. The Caveat in a Testamentary Petition is obviously meant to oppose the grant of probate. It opposes proof of the Will in its solemn form. This is the only purpose of a Caveat.

8. Mr. Saraf for Ashok Gupta submits that there is no challenge to the Will in the Caveat but Ashok Gupta only wanted to bring to the notice of the Court that the original Petitioner Baldev Gupta had

dealt with some property without his consent. If this is so, the filing of a Caveat was singularly ill-advised and a complete misadventure. But the Affidavit in Support of the Caveat does not stop at that. In paragraph 9, Ashok Gupta says this:

“I say and submit that the entire Will as sought to be propounded is based on the false contentions and premises and I submit that the same is totally false and contrary to facts.”

In paragraphs 10 (g) and (h), he says this:

“10(g) With reference to paragraph 1 and 2 of the Affidavit in Support of the said Petition, I say and submit that though there were persons who witnessed the said execution of the Will it is not amply clear that the Petitioner and the Dr. Shahrukh Aspi Golwala were present hence I put the Petitioner to the strictest proof thereof.

(h) With reference to paragraph 3 of the Affidavit in Support of the said Petition, I deny the contents thereof and I cannot identify the signature of the said person Dr. Shahrukh Aspi Golwala and put the Petitioner to the strictest proof thereof.”

9. Taken together, this is the clearest possible challenge to the Will sought to be propounded. He disputes its authenticity and its due execution.

10. There is no question of Ashok Gupta, therefore, being permitted to continue as an executor of the Will or of granting him probate. The fact that he has taken inconsistent and shifting stands is enough to dislodge him. First, he did not join in the application for Probate. He claims he was never asked. Even if that is so, when served with a citation, he could have come forward with just such an application to be joined as a co-Petitioner. Instead, he opposed the Petition for probate by filing a Caveat. In the Affidavit in Support in support of that Caveat, he made the statements that I have extracted above. These statements not only affect and speak to the contents of the Will but also its due execution. There is no question of accepting Ashok Gupta's application for impleadment as a Petitioner for dislodging Amar Gupta as the present Petitioner or for reconverting the Petition to one for probate.

11. Ashok Gupta's Notice of Motion No. 263 of 2016 is dismissed.

12. At this stage, Mr. Saraf for Mr. Ashok Gupta makes a statement that since he is a beneficiary to the Will, he withdraws the Caveat. The Caveat is discharged and dismissed as withdrawn.

13. Ashok Gupta is removed as an executor of the Will in view of his having filed a Caveat and in the circumstances mentioned above. There is, therefore, no question of serving him with a special citation to accept or renounce executorship.

14. In view of the withdrawal of his Caveat, the Petition is uncontested and will proceed expeditiously as such.

15. In view of the above, the Notice of Motion No. 162 of 2016 does not survive and is disposed of as infructuous.

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