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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 119 OF 2015
IN
TESTAMENTARY SUIT NO. 128 OF 2014
IN
TESTAMENTARY PETITION NO. 776 OF 2014**

Harishchandra Dagdu Devrukhkar ...Plaintiff
Versus
Sakshi Sanjay Patil & Another ...Defendants

Mrs. Vinita N. Bhende, *for the Plaintiff*.

**CORAM: G.S. PATEL, J
DATED: 7th June 2016**

PC:-

1. This is the Plaintiff's Notice of Motion for discharge of the two Caveats filed on the ground that the caveators have no caveatable interest. The Notice of Motion has been served.

2. *Prima facie*, Ms. Bhende appears to be correct in her submission. The Petition is for Letters of Administration to the property and credits of one Babaram Narayan Warankar. Two Caveats are filed, one by Taraben Labhshankar Desai and the other by her daughter Sakshi Sanjay Patil. Taraben is the sister of Smt.

Leelaben Babaram Warankar, i.e., Babaram's wife. Leelaben herself died two months after Babaram's death. In any case, Babaram was survived by a sister's son and his brother's wife. They are heirs who would exclude both the Caveators who are hierarchically lower under the provisions of the Hindu Succession Act.

3. Ms. Bhende relies on the decision of the Supreme Court¹ in support of the proposition that a Caveat can only be maintained by someone who has a caveatable interest, i.e., interest such as is recognized by law. She also relied on my previous order in another case.² In that decision, I considered the provisions of Sections 8 and 9 of the Hindu Succession Act, 1956 holding that the heirs of each class are preferred to those in succeeding class. In respect of the heirs in Class II and below, there are several sub-entries. The heirs in each higher entry exclude those in lower entries. This is how it must be in this particular case, where it is Section 8 that will apply. The Petitioner is a nephew of the deceased, i.e., the deceased Babaram's sister's son. He is in sub-entry (2) of Entry IV of Class II. The Caveators do not figure either in Class I or Class II.

4. The Notice of Motion succeeds. It is made absolute in terms of prayer clauses (a) and (b). Both the Caveats are discharged. The Petition to proceed as an uncontested Petition.

(G. S. PATEL, J.)

1 *Krishna Kumar Birla v. Rajendra Singh Lodha & Others*, (2008) 4 SCC 300

2 *Prashant Gopal Gokhale v. Manasi Shyamsunder Kelkar*, 2015(1) Bom.C.R. 270