Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 127 OF 2015
IN
TESTAMENTARY SUIT NO. 81 OF 2011
IN
TESTAMENTARY PETITION NO. 614 OF 2007

Aparna Prabhat Khot …Applicant
In the matter between
Aparna Prabhat Khot ...Plaintiff
Versus
Asim S. Shah & 4 Ors. …Defendants

Mr. B. G. Saraf, *for the Applicant/Plaintiff.*
Mr. Ajay Panicker, *i/g M/s. Ajay Law Associates, for the Defendants.*

CORAM: G.S. PATEL, J
DATED: 6th April 2016

PC:-

1. The Motion seeks dismissal of the Caveat filed by five persons, all claiming to be the trustees of one Bhartiya Arogya Nidhi, a registered Charitable Trust that runs a hospital at Juhu. The trustees, in that capacity (not in their personal capacities), are not in any way related to the deceased Arun Madhavrao Khot or to the Petitioner, his sister-in-law, Aparna Khot.

2. Mr. Saraf submits that the Caveat is not maintainable because the trustees are not heirs of the deceased. This might have been a submission of some consequence but for the fact that the trustees' Caveat is filed on the footing that they are legatees of the same deceased under a previous Will dated 15th March 1996, one that that is even registered. The Executor of that earlier Will, one Suresh H. Mody had filed Testamentary Petition No. 113 of 2007. Mr. Mody died on 26th March 2010. The Caveators/Trustees then filed a Chamber Summons No. 151 of 2010 seeking to continue that action and to have it amended as one for a Petition for Letters of Administration with Will annexed. This was permitted by an order dated 8th February 2011. That order has attained finality as it has not been carried in Appeal.

3. Even more curious is the fact that the present Petitioner, Aparna Prabhat Khot in Testamentary Suit No. 81 of 2011, who propounds a later Will of the deceased, has not filed a Caveat in the previous Testamentary Petition No. 113 of 2007 now being pursued by the Trustees. The Trustees' Petition is, therefore, uncontested.

4. It is true that the Trustees are not the heirs of the deceased and would not succeed to any part of this estate on intestacy but that is not their claim. They claim as, and only as, legatees under the previous Will. Had that claim remained merely as a defence set up to the present probate action brought by Aparna Khot, I might have considered the question of whether these Trustees can sustain such a Caveat. It would not be enough to merely set up a previous Will in defence. But the Trustees have gone further. They have actually taken active steps and are now Petitioners in an as yet uncontested Petition for Letters of Administration, i.e., Testamentary Petition No. 113 of 2007. This is a substantive proceeding.

5. Given this, I do not see how it is possible to dismiss their Caveat opposing the grant of probate to the later Will propounded by Aparna Khot. Allowing her application for dismissal of the Trustees' caveat will result in several immediate consequences. First, the present application by Aparna Khot would become uncontested. Second, and as an immediate consequence, the Trustees' Testamentary Petition No. 113 of 2007 would stand defeated, be rendered infructuous and would have to be dismissed.

6. In other words, allowing Mr. Saraf's application has a cascading effecting, including automatic dismissal of a substantive proceeding filed by the present Caveators/Trustees and which is so far uncontested.

7. I do not see how in equity or law the present Notice of Motion can possibly be sustained.

8. I am not deciding the question of whether the Caveators in the later Probate Petition have a caveatable interest or not. All contentions in that behalf are expressly kept open to the final hearing of the Suit. In the meantime, this Notice of Motion is dismissed with no order as to costs.

(G. S. PATEL, J.)