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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 129 OF 2015
IN
TESTAMENTARY SUIT NO. 123 of 2015
IN
TESTAMENTARY PETITION NO. 1616 of 2012**

Hufriz Maneckshaw Wadia	...Plaintiff
<i>Versus</i>	
M/s. Kala Niketan	...Defendant

Ms. Alpana Ghone, *i/b Praveer Shetty, for the Plaintiff.*
Ms. Vidya Bandekar, *for the Defendant.*

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

PC:-

1. This is the Plaintiff's application for discharge of the Caveat. The Caveator is the landlord of a building in which a tenanted flat was once occupied by the deceased is situated. The landlord cannot possibly be an heir. It is a partnership firm. The only basis of the Caveat is that the Will purports to make a bequest in respect of the tenancy. It is well settled that a tenancy cannot be bequeathed. The grant of probate will not change that position nor will it confer any title. This is neither permitted by law or even otherwise. Separate

civil proceedings must be instituted to establish or defend the title. All contentions in that behalf are kept open.

2. In this regard, Ms. Ghone is correct in relying upon the decision of the Supreme Court in *Krishna Kumar Birla v. Rajendra Singh Lodha & Others*.¹ In paragraph 86, the Supreme Court said that to sustain a Caveat, a caveatable interest must be shown and a further or additional test is to see whether any person questions title to any of the properties covered by the probate. If so, that person is a stranger to the probate proceedings as no question of title can be effectively adjudicated in such proceedings. This is a clear and unambiguous statement of law.

3. The Caveat is unsustainable. The Notice of Motion succeeds. The Caveat is discharged. There will be no order as to costs.

4. Registry to proceed with the Petition as an uncontested Petition for probate.

(G. S. PATEL, J.)

¹ (2008) 4 SCC 300