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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY & INTESTATE JURISDICTION

NOTICE OF MOTION NO.94 OF 2017
IN
TESTAMENTARY SUIT NO.230 OF 2015
IN
TESTAMENTARY PETITION NO.977 OF 2015

Mahadev G. Motugade ...Applicant

IN THE MATTER BETWEEN :

Mahadev G. Motugade ...Petitioner

V/s.

Vishnu N. Mali & Ors. ...Respondents

Mr.Umesh Mankapure i/b Mr.Akshay Shinde for the Applicant /
Original Petitioner.

Mr.Madhav Jamdar for the Respondents.

CORAM : R.D. DHANUKA, J.

DATE : 24TH JULY, 2017.

P.C. :-

1. By this notice of motion, the applicant (original petitioner) seeks dismissal of the Caveat No.320 of 2015 filed by the respondents on the ground that the caveators have raised the issue of title in respect of immovable properties which are referred in the Will alleging that the same are the joint family properties. Learned counsel appearing for the applicant invited my attention to some of

the documents annexed to the affidavit in support of the notice of motion and also some of the averments made in the affidavit in support of the caveat filed by the caveators.

2. Mr.Mankapure, learned counsel appearing for the applicant also placed reliance on the judgment of this Court in case of **Kusum Bharat Asaprota & Anr. vs. Jagdish Asaprota & Anr.** **2015(1) Mh.L.J. 127** and in particular paragraph 29 thereof in support of the contention that since the caveators have disputed the title of the said deceased in the affidavit in support of the caveat, the caveat is not maintainable.

3. Mr.Jamdar, learned counsel for the caveators on the other hand invited my attention to the averments made in the affidavit in support of the caveat dated 2nd March, 2015 and would submit that the execution of the alleged Will itself is disputed by the caveators. He submits that the caveators have also alleged fraud on the said deceased by the petitioner in execution of the alleged Will. The caveators have also alleged that the physical and mental condition of the deceased was not proper at the time of the execution of the alleged Will.

4. It is submitted that the caveators would be entitled to inherit the property of the said deceased under section 15 of the Hindu Succession Act, 1956.

5. A perusal of the affidavit in support of the caveat clearly indicates that the caveators have alleged that the pressure had been brought upon the said deceased by the petitioner and that the deceased was threatened to execute the alleged Will. The caveators have also alleged that the physical and mental condition of the deceased was not proper at the time of execution of the alleged Will. The caveators also at the same time disputed the title in respect of the deceased in respect of the immovable properties contending that the properties were joint family properties.

6. Though the caveators have raised a dispute in respect of the title of the said deceased, a perusal of the affidavit in support of the caveat indicates that the caveators have also disputed the existence of the alleged Will on various grounds, including on the ground that the physical and mental condition of the said deceased was not proper at the time of execution of the alleged Will. They also alleged the pressure and threat allegedly given by the petitioner to the said deceased for execution of the alleged Will.

7. There is no dispute about the proposition laid down by the Supreme Court in case of **Krishna Kumar Birla vs. Rajendra Singh Lodha & Ors.** which is adverted by this Court in the judgment of this Court in case of **Kusum Bharat Asaprota & Anr. vs. Jagdish Asaprota & Anr.** relied upon by Mr.Mankapure, learned counsel for

the applicant. In my view since the caveators have raised various other objections other than the dispute of title in respect of some of the properties regarding execution of Will, such issues will have to be gone into by this Court and those issues can be decided only after oral and documentary evidence is led by the parties.

8. Mr.Mankapure, learned counsel for the applicant does not dispute that if the Will is not proved by the applicant, upon intestacy the caveators will have share in the property. In my view, in these circumstances, the caveat cannot be dismissed by this Court at this stage.

9. The notice of motion is dismissed accordingly. No order as to costs.

10. Place the testamentary suit on board for directions on 14th August, 2017 for issuing directions for framing of issues.

(R.D. DHANUKA, J.)