

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION**

**NOTICE OF MOTION NO.109 OF 2017
IN
TESTAMENTARY SUIT NO.42 OF 2017
IN
TESTAMENTARY PETITION NO.2120 OF 2016**

Chatru Jethanand Khathuria ... Applicant

In the matter between :

Chatru Jethanand Khathuria ... Applicant/Org. Petitioner

Versus

Poonam Manoj Khathuria ... Respondent/Org. Caveator

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Rumi Mirza a/w Shobha Salvi, Ms. Nayan Chifade i/b Ashok Dhanukar for
the Applicant.

Poonam Khathuria, Respondent/Caveator in person.

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CORAM : S.C.GUPTE, J.

DATE : 14 NOVEMBER 2017

P.C. :

. Heard learned Counsel for the Applicant in the Notice of Motion and
also the Respondent/Caveator in person. The Notice of Motion is for
dismissal of the caveat filed by the Respondent on the ground that she has
no caveatable interest.

2 The present petition is filed by the Petitioner for probate of the last
will and testament of the deceased Balraj Jethanand Khathuria. The
Petitioner is the brother, and executor of the last will and testament, of the
deceased. The legal heirs and next of kin of the deceased include the

husband of the Respondent/Caveator. All of them have filed their consent affidavits along with the testamentary petition. The Respondent/Caveator claims as the wife of one Manoj Khathuria, who is the son of the deceased. Admittedly, the husband of the Respondent/Caveator is alive and during his lifetime, the Respondent/Caveator cannot claim any right to the property of the deceased as his legal heir. So also, admittedly the Respondent/Caveator is not a beneficiary under any testamentary instrument/s executed by the deceased. If that is so, she has no caveatable interest in the testamentary petition herein.

3 The only basis, on which the present caveat is filed, as indicated in the affidavit in support of the caveat, is that the Petitioner has not disclosed the names of the caveator, her husband and children, who are said to be direct legal heirs of the deceased. The only direct heir of the deceased, the Respondent's husband, is disclosed in the petition as a legal heir and next of kin of the deceased. Neither the Respondent nor her children can be described as legal heirs of the deceased. The Respondent submits that she has orders in her favour concerning possession of her matrimonial home, which forms part of the estate of the deceased and that she also has an order concerning the rent payable to her in lieu of that accommodation. (The building is presently under re-development and the occupants are in temporary alternate accommodations recovering rent for such accommodations from the developer.) The grant of probate in the present petition will have no effect as far as the orders passed by the Court in favour of the Respondent concerning her rights in the matrimonial proceedings are concerned. In a probate petition, the Court has no concern with the property of the deceased as such, but simply with the validity and

genuineness of the will executed by the deceased.

4 In the premises, the Notice of Motion is made absolute in terms of prayers-(a) and (b). No order as to costs.

(S.C. GUPTE, J.)