

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
TESTAMENTARY SUIT NO.63 OF 2009
IN
TESTAMENTARY PETITION NO.427 OF 2009**

Aasha Hariram Chellwani and Anr.Plaintiffs/Petitioners

Vs.

Vijay Hariram ChellwaniDefendant/Caveator

Ms. Padmaja Dholakia i/b. Dholakia Law Associates for plaintiffs.

Ms. Rekha Musale i/b. Ms. Varsha Palav for defendant.

CORAM : K.R.SHRIRAM, J.

DATE : 25th APRIL, 2017

PC.:

1 Today the suit is listed for framing of issues. When I went through the affidavit in support of the caveat, I could not find anywhere any averment by the caveator questioning the existence of the Will or that the Will was not properly executed or has been obtained by exercising undue influence over the Testatrix or the Will is forged etc. In short, there is no challenge to the existence of the Will. The entire affidavit in support proceeds on the basis that the petitioners are not fit to be executors and the defendant apprehends the petitioners may misappropriate the estate of the deceased.

2 Ms. Musale, counsel for caveator also agrees that there is no statement in the affidavit in support questioning the validity of the Will.

3 In the circumstances, I see no reason why the court should spend its valuable judicial time in framing issues, making the parties go

through the entire trial process and come to the same conclusion that the court can arrive at today. Registry to proceed on the basis that the petition for grant of probate is unopposed and take further steps accordingly.

4 Suit accordingly stands disposed.

5 The counsel for petitioners confirms that the undertaking given by the petitioners as recorded in the order of 27th August, 2010 will be complied with in true spirit and sense. Statement accepted.

(K.R. SHRIRAM, J.)