

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

**NOTICE OF MOTION NO. 170 OF 2016
IN
TESTAMENTARY SUIT NO. 7 OF 2005
IN
TESTAMENTARY PETITION NO. 630 OF 2002**

Vinayak Sanghvi

...Applicant

In the matter between

Kishore Sanghvi

...Plaintiff/Petitioner

Vs.

Vinayak Sanghvi

...Defendant/Caveator

Mr.G.S. Godbole I/b. Sumit Kothari for Plaintiff.

Ms.Mamta Sadh with Ms.Jesal Shah I/b Daru Shah & Co. for
Defendant/Applicant in NMT.

CORAM : S.C. GUPTE, J.

DATE : 31 OCTOBER 2017

P.C. :

Heard learned Counsel for the parties

2 The notice of motion seeks various prayers in the testamentary suit. All the other prayers have already been addressed save and except prayer clause (a), which seeks appointment of the Applicant/Defendant as an Administrator of the estate of the deceased. As the record of the case stands, there is no case made out to show that the estate of the deceased is in danger of being wasted or needs any protective relief of appointment of

Administrator. From what is produced with the affidavit in reply, it is apparent that the Plaintiff, who is supported by other legal heirs of the deceased save and except the Defendant herein, has been protecting the property adequately by paying the taxes and outgoings. The receipts of payments made through the intervening years have been produced with the affidavit in reply. The only grievance of the Defendant in the present notice of motion is that the Plaintiff and his brothers/sisters who support him, are not paying rent in respect of the suit property and that the Defendant be appointed as an Administrator of the estate so as to collect the rents. Even this position is adequately explained in the affidavit in reply by the Plaintiff. As indicated in para 10 of the reply, the Plaintiff claims that he along with other brothers/sisters, who have been tenants in the said building claiming under their father, the landlord, have all become owners of the suit building after the death of their father and as such are not required to pay any rent in respect of the flats occupied by them. They have, however, paid Municipal taxes and all statutory dues in accordance with the documents produced with the affidavit in reply.

3 From this material, *prima facie* it does appear that the suit property is being properly looked after by the Plaintiff and other brothers and sisters, all of whom are on one side, the Defendant being the lone objector to the application for letters of administration as heir and next of kin of the deceased. There is no case made out for appointment of any administrator *pendente lite*. Prayer clause (a) of the notice of motion is accordingly rejected. All other prayers have admittedly been addressed/taken care of by the orders passed in the matter so far. The notice of motion is accordingly disposed of.

4 The hearing of the suit is in progress. Evidence has been partly recorded. Place the suit for directions on 20 November 2017.

(S.C. GUPTE, J.)