

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

**NOTICE OF MOTION NO. 214 OF 2016
IN
CAVEAT (LODG.) NO. 126 OF 2016
IN
TESTAMENTARY PETITION NO. 381 OF 2016**

Late Shri Ramchandra Narayan Gurav .. Deceased

Mr. Deepak Anant Gurav .. Applicant

In the matter between :

Mr. Deepak Anant Gurav .. Petitioner

Vs.

Mr. Mangesh Chandrakant Gurav .. Respondent/Caveator

Mr. Khushnoob Akthar i/b Rajiv Jadhav for petitioner/applicant.

Mr. Janardhan P. Kotian for caveator.

CORAM : K.R. SHRIRAM, J.

DATE : 1ST MARCH, 2017

P.C.

1 This notice of motion is taken out for declaring the caveat, dated 5th April 2016 filed by Mangesh Chandrakant Gurav along with the affidavit in support dated 28th March 2016 as not maintainable. It is the case of the applicant that the caveator is not a legal heir of the deceased and therefore, could not have any caveatable interest and hence cannot file the caveat.

2 The deceased was one Ramchandra Narayan Gurav, who died on 16th

October 2015. According to the applicant, he is a legal heir whereas the caveator is not. The testator was a project affected person and during his lifetime, he was given a temporary accommodation in a building situated at Asmi Complex, Room No.216, Building No.R-1/C, Kajal Complex, Goregaon (West), Near Ashirwad Industrial Estate No.5, Mumbai 400 104. It is the case of the caveator that the caveator was living with the deceased who was a bachelor. The caveator is propounding a registered Will of the deceased as the last Will and testament of the deceased and has filed a Probate Petition for letters of administration being Petition No.1136 of 2016.

3 The case of the applicant herein is that the caveator at the most can claim right or entitlement on the property mentioned in the schedule but what the caveator is claiming is for the permanent alternate accommodation that the deceased would have got if he were alive. Shri Akhtar, therefore, states that both the properties cannot be connected and what the caveator can seek at the most claim is right or entitlement on the property mentioned in the schedule.

4 I do not agree with Shri Akhtar. Paragraph 5 of the Will propounded by the caveator in his letters of administration No.1136 of 2015 reads as

under :

“5 I say that the Room mentioned in Scheduled “A” has been given to me for a temporary period under the scheme of M.M.R.D.A. and MUIP Policy and the said M.M.R.D.A. and MUIP will provide a permanent accommodation to me later and hence after my death, the said property must be given to Mangesh Chandrakant Gurav for ever after my death.”

5 It is settled law that a document has to be read in its totality and cannot be read in bits and pieces. The intention, as it appears from the writing dated 24th June 2013 is that the deceased was aware that he will get permanent accommodation and that accommodation after his death should go to the caveator. I must hasten to add that I do not certify that the Will as propounded, is valid or genuine and my observation is only *prima-facie*. Therefore, at this stage I cannot throw out the caveator stating that he has no caveatable interest.

6 The notice of motion dismissed.

(K.R. SHRIRAM, J.)