

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

**NOTICE OF MOTION NO.120 OF 2015
IN
TESTAMENTARY SUIT NO.107 OF 2015
IN
TESTAMENTARY PETITION NO.1137 OF 2013**

Dhirajlal Raishi Chheda ... Applicant/Caveator/
Defendant

In the matter between

Mukesh Raishi Chheda ... Plaintiff

Versus

Dhirajlal Raishi Chheda ... Caveator/Defendant

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Mr. Y. Ghogani i/b Jatin Sheth for the Plaintiff.

Mr. N.D. Jaywant a/w P.A. Sarwankar i/b M/s Sarwankar & Co. for the
Applicant/Defendant.

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CORAM : S.C.GUPTE, J.

DATE : 6 NOVEMBER 2017

P.C. :

. Heard learned Counsel for the parties. The present Notice of Motion by the Applicant/Defendant seeks injunctive relief against the Plaintiff herein in terms of prayer clause-(c) of the Notice of Motion. The other prayers, namely, prayers-(a) and (b), are not pressed by learned Counsel for the Applicant/Defendant. Prayer-(c) seeks a temporary injunction against the Plaintiff from representing, claiming or setting up any right in his own favour as owner of the properties described in the last will and testament set up by the Plaintiff in the present suit. Upon a query of the Court, learned Counsel for the Applicant/Defendant submits that this relief

is claimed under Section 213 of the Indian Succession Act. Learned Counsel submits that the present Plaintiff has filed an affidavit in a declaratory suit filed by the Defendant herein in the Small Causes Court, Mumbai, *inter alia* taking a stand that he has become the sole owner and landlord of the property, forming the subject matter of the Small Causes Court suit, by virtue of the last will and testament of the deceased. Learned Counsel also relies on incidents narrated in paragraph-9 of the affidavit in support of the Notice of Motion. Based on this circumstance and these incidents, learned Counsel submits that the Plaintiff herein is claiming to be the owner of the property and credits of the deceased testator without a probate and sets up a title in himself. It is submitted that it is clear that the Plaintiff does not intend to truly represent the estate of the deceased testator in the pending suit. Whether the Plaintiff, by reason of his conduct in the suit or otherwise, is entitled to represent the estate of the deceased, is a question, which will have to be decided at the hearing of the present testamentary suit. As far as the injunctive relief prohibiting the Plaintiff from establishing any right as executor or legatee without probate is concerned, the remedy of the Plaintiff lies elsewhere. As and when any such right is claimed, the aggrieved party must file his own case or apply for suitable relief in the suit, in which such right of executor is claimed to be established by the opponent. A petition for probate is not an appropriate proceeding where such relief can be granted as and by way of an injunction.

2 Notice of Motion is accordingly dismissed. No order as to costs.

3 On the application of the parties, time to record the evidence of P.W.
3 is extended by a period of four weeks from today.

(S.C. GUPTE, J.)