

Amk

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO. 1 OF 2017
IN
TESTAMENTARY SUIT NO. 110 OF 2014
IN
TESTAMENTARY PETITION NO. 343 OF 2014**

Mrs. Unnati Sudhanshu Vyavaharkar .. Applicant

In the matter between

Mrs. Unnati Sudhandshu Vyaharkar .. Plaintiff

Vs

Mr. Shreepad Moreshwar Velkar .. Defendant

**WITH
TESTAMENTARY SUIT NO. 110 OF 2014
IN
TESTAMENTARY PETITION NO. 343 OF 2014**

Mrs. Unnati Sudhandshu Vyaharkar .. Plaintiff

Vs

Mr. Shreepad Moreshwar Velkar .. Defendant

Ms. Ferzana Behramkamdin a/w. Ms. Shlesh Sheth i/b FZB & Associates
for the Plaintiff.

Mr. Archit Jayakar a/w. Ms. Uma Acharya and Ms. Bijal Gandhi i/b Jayakar
& Partners for the Defendant.

**CORAM : K.R. SHRIRAM, J.
DATE : 23rd MARCH, 2017.**

P.C.:

1. This Notice of Motion is taken out by the plaintiff challenging the caveatable interest of the caveator. One Moreshwar Velkar and his wife Sushila Velkar had three children, viz., Shreepad Velkar (son),

Pramila Dhurandhar (daughter) and Shaila Dhurandhar (daughter).

2. This petition is filed seeking grant of probate of the last will and testament dated 19.06.2010 of Sharad Dhurandhar, who was the husband of Pramila Dhurandhar. In the will, the deceased Sharad Dhurandhar has bequeathed the flat in which he was residing to two daughters of Shaila Dhurandhar, i.e., Prasanna Gokhale and Kavita Gonsalves.

3. The caveator herein is Shreepad Velkar, the brother of the wife of the deceased. The Notice of Motion is taken out to strike down the caveat on the ground that Shreepad Velkar, the caveator had no caveatable interest in the property of his sister's husband.

4. Before I proceed to consider whether he had caveatable interest or not, along with counsel for the plaintiff we read through the affidavit-in-support of the caveat filed by Shreepad Velkar. In the entire affidavit, and Mr. Jayakar agrees, there is not even a whisper about the validity of the will. The caveator has not contested that the will was validly executed in accordance with Section 63 of the Indian Succession Act or taken a ground that the testator while executing the will did not possess sound disposing mind. The entire affidavit proceeds on the basis that the testator had no title to the properties that he has bequeathed to Prasanna

Gokhale and Kavita Gonsalves, the daughters of Shaila Dhurandhar. It is settled law that in a petition for grant of probate, the Court does not look into the title of the property. The Court only considers whether the will has been validly executed under Section 63 of the Indian Succession Act. The caveator not having challenged the execution of the will, in my view the Prothonotary and Senior Master should go ahead and grant a probate of the will as an uncontested matter.

5. Mr. Jayakar relies on a Judgment of a Single Judge of this Court (Coram : G. S. Patel, J.) in **Dr. Veena Ramchandra Patel Vs. Bakhtawar Arzan Ghadially** reported in ((2015) 5 AIR Bom R 345 to submit that in a petition for probate, the Court can go into title. I am afraid, I cannot agree with Mr. Jayakar. The Judgment cited is not applicable to the facts and circumstances of this case because in that matter the caveatrix had challenged the validity of the will. Paragraphs 6 and 9 read as under:

“6. In the rest of her affidavit in support, the Caveatrix raises various disputes about the deceased's mental capacity, authenticity of the Will and claims that the Will is forged.

9. It is a ground urged in support of the contention that the will is not authentic and genuine.”

In the present petition as stated earlier and as agreed by Mr. Jayakar, the caveator has not challenged the authenticity of the will. Therefore, this Judgment is not applicable.

6. So far as the point raised by the caveator that the deceased could not bequeath the properties to Prasanna Gokhale and Kavita Gonsalves because the testator himself did not have any right or title over the said properties, it will be open for the caveator to take such steps in the appropriate forum as advised for a declaration to that effect.

7. In view of the above, the Notice of Motion, accordingly, stands disposed.

8. The Suit also is, accordingly, disposed.

9. Decree be drawn up accordingly.

10. At the request of Mr. Jayakar implementation of the order is stayed for two weeks from today.

[K. R. SHRIRAM, J.]