

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY AND INTESTATE JURISDICTION

NOTICE OF MOTION NO. 138 OF 2018

IN

TESTAMENTARY SUIT NO. 130 OF 2014

IN

TESTAMENTARY PETITION NO. 297 OF 2014

Neelam Suresh

...Plaintiff

Versus

Hemant Shivanand Wagle

...Defendant

Mr Darshit Jain, I/b SJ Nagarani, for the Plaintiff.

Ms Kalyani Tulankar, I/b Sharmili Mhatre, for the Defendant.

CORAM: G.S. PATEL, J

DATED: 24th July 2018

PC:-

1. The Petition is for Letters of Administration to the property and credits of one Shantabai Shivanand Wagle who died in Mumbai on 25th October 2004. The Petition is filed by her daughter who says that she died intestate. In response, the Plaintiff's brother, the deceased's son, Hemant Shivanand Wagle does not set up a Will. He does dispute in his Caveat that his sister, the Petitioner, is entitled to the Letters of Administration. He says that she has come to Court very late, with no explanation for the delay, only to try and

claim the single and most valuable asset in that estate, a residential flat at Jogeshwari.

2. Hemant says that he lives in this flat with his daughter, and has always done so. He says that the Petitioner did not visit their father and did not look after the deceased. He says that she did not care for them even in their illness. He goes on to say that it is his daughter who was made a nominee of the flat in question by the deceased. In paragraph 11 he says that he has administered and protected the estate and that there is no requirement to grant Letters of Administration to his sister, the Petitioner.

3. It is not possible to say from these averments or from any fair reading of the Caveat that the Caveat does not disclose a ground of opposition to the Petition for Letters of Administration. The issue is only whether the Letters of Administration should be granted to the Plaintiff or to the Defendant, or to them jointly, or to some other fit and proper person.

4. This, however, is no ground for discharging the Caveat, which is the relief sought in the Notice of Motion.

5. The Notice of Motion is dismissed. There will be no order as to costs.

(G. S. PATEL, J)