

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
INTERIM APPLICATION NO. 1540 OF 2022**

Dr. Avinash Sudarshan Singhai
@ Avinash S. Singhai

... Deceased

Sunanda Sunilkumar Jain and others

... Applicants/Petitioners

**IN
CAVEAT (LODGING) NO. 23681 OF 2021
WITH
INTERIM APPLICATION (LODGING) NO. 26802 OF 2023
IN
INTERIM APPLICATION NO. 1540 OF 2022
AND
INTERIM APPLICATION (LODGING) NO. 29355 OF 2023
WITH
WILL NO. 417 OF 2021
IN
TESTAMENTARY PETITION NO. 1021 OF 2021
ALONGWITH
TESTAMENTARY PETITION NO. 668 OF 2020
WITH
CAVEAT (LODGING) NO. 38368 OF 2022
WITH
WILL NO. 264 OF 2020
IN
TESTAMENTARY PETITION NO. 668 OF 2020**

Ms. Sunita B. for petitioner in TP/1021/2021.

Mr. Sajid Shamim a/w. Mr. Murtuza Slatewala, i/b. S. Shamim & Co. for caveators in TP/1021/2021 and petitioners in TP/668/2020.

Ms. Manju Subhash Raikwar, petitioner No.3 in TP/1021/2021 in-person.

**CORAM : MANISH PITALE, J.
DATE : 1st NOVEMBER, 2023**

P.C. :

. This is an application filed on behalf of the petitioners for dismissing the caveats. It is submitted that the caveats deserve to be dismissed, for the reason that the will propounded by the petitioners, bequeaths the estate of the deceased in favour of the legitimate children of the caveator Nos.2 and 3.

2. The learned counsel for the applicants/petitioners submits that the petition was filed by the petitioners in-person and it was being pursued as such. But now, the petitioners have engaged the said counsel. She undertakes to file *vakalatnama* within one week from today.

3. Learned counsel for the applicants submitted that the subsequent codicil dated 17.12.2017, upon which the caveators rely, is an unsustainable document, for the reason that the handwritten words in Hindi are in shaky script and even the alleged signature of the deceased is doubtful. It is submitted that in that light, the present application may be allowed.

4. Learned counsel for the caveators submitted that they have a registered will dated 14.07.2009 in their favour, on the basis of which they have filed the accompanying Testamentary Petition No.668 of 2020. It is submitted that a copy of the subsequent codicil is also placed on record with the said petition at Exhibit C and that it would be a matter of evidence and trial. In that light, it is submitted that let the present application may be dismissed.

5. This Court is inclined to consider the contentions raised on behalf of the caveators. Any finding to be rendered by this Court on the rival claims

and on the genuineness of the aforesaid codicil dated 17.12.2017, would be dependent on evidence being led by the parties and therefore, the caveats cannot be dismissed at this stage.

6. In view of the above, the application is dismissed.

7. It is further pointed out that by the learned counsel for the petitioners in Testamentary Petition No.668 of 2020, that the petitioner No.3 herein, appearing in-person in the accompanying Testamentary Petition No.1021 of 2021, obtained an order on a *praecipe* to carry out appropriate amendment by way of correcting minor errors in the petition.

8. It is brought to the notice of this Court that the petitioners in the said petition have carried out substantial amendments, which cannot be permitted under Rule 150 of the Bombay High Court (Original Side) Rules, 1980.

9. The caveators in the said petition i.e. the petitioners in Testamentary Petition No. 668 of 2020, are permitted to move an appropriate application for recall of the order dated 12.10.2023.

10. List for further consideration on 13.12.2023.

(MANISH PITALE, J.)