

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 179 OF 2019
IN
TESTAMENTARY SUIT NO. 60 OF 2012**

Girijadevi Nandprasad Singh ...Deceased

Chandrabhan Vijay Bahadur Singh & Anr. ...Applicants/Orgi. Petitioner

In the matter of

Chandrabhan Vijay Bahadur Singh & Anr. ...Petitioners

Vs.

Sunil Ram Sagar Chaubey ...Caveator/ Respondent

Mr. Madhur Rai i/by Ms. Shilpa Bhate for Applicant.

CORAM : ARIF S. DOCTOR, J.

DATE : 24th March, 2023

P.C. :

1. The present Notice of Motion has been taken out for rejection of the Caveat filed by one Sunil Ram Sagar Chaubey, the sole Caveator. The sole ground on which the Caveator claimed a Caveatable interest is set out in the second unnumbered paragraph of the Affidavit-in-Support of the Caveat which reads thus:-

*"I say that I have filed L.A. Petition LT No. 304 of 2012
before this Hon'ble Court for letter of Administration of*

property to the credits of Late Ashok Kumar Singh S/o Ramshankar Singh holder of probate order/decreed regarding the Hissa No.8 of Survey No. 154 admeasuring area 10 Guntha, 1089 sq. meters, eqivalent to 1210 square yards corresponding C.T.S. No.293, 293, 1 to 83 (part) situated at Jawahar Nagar, Khar (E), Mumbai-400 051 entitled as per judgment and order dated 27.02.2011 passed by Add. District Judge Shri. Sangamlal in probate petition no. 109 of 2010 at District Court, Varanasi, U.P. for probate of last Will of deceased Smt. Girijadevi Nandprasad Ramjeet Singh dated 02.07.1999 in favour of deceased predeceased husband's Nephew Ashok Kumar Singh S/o Ramashankar Singh."

2. Learned counsel for the Plaintiff invites my attention to an order dated 1st February, 2019 passed by the Seventh Additional Judge, Varanasi. In which the said Probate Petition filed by the Caveator has been dismissed and the Probate Certificate dated 10th March, 2011 issued to the Caveator has been revoked. He submits there is no challenge to the order and the same has attained finality.

3. In view of this learned counsel submits that there is on the Caveators own showing no caveatable interest in the estate of the deceased. In view of this he submits that the present motion must to be allowed.

4. Today though appearance has been entered on behalf of the Caveator none has appeared.

5. Learned counsel has filed an Affidavit of Service proving certificate of the present Notice of Motion upon the Caveator. There is no Affidavit-in-Reply filed to the present Notice of Motion.

6. I therefore see no reason why the name of the advocate appearing on behalf of the Caveator is shown on board.

7. In view of this, I find that there is no reason why the present Notice of Motion should not be allowed given that the sole ground on which the Petition was being opposed does not subsist any more.

8. Notice of Motion is therefore allowed in terms of prayer clause (a) which reads as under:-

“(a) Pending the hearing and final disposal of the present suit, the Caveat dated 02.03.2012 taken out by the Caveator be dismissed;”

9. Notice of Motion is accordingly disposed of.

10. The Suit is now restored back to the Testamentary Petition. Office to proceed accordingly.

(ARIF S. DOCTOR, J.)