

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

**APPEAL NO.82 OF 2024
IN
NOTICE OF MOTION NO.56 OF 2019
IN
TESTAMENTARY PETITION NO.2278 OF 2018**

Mr. Narendra Singh Chawara : Appellant
(Original Intervenor/
Applicant.)

Vs.

Mrs. Hemangini Kumari Prithvi Raj : Respondent.
(Original Petitioner)

**ALONG WITH
INTERIM APPLICATION NO.1262 OF 2024
IN
APPEAL NO.82 OF 2024**

Mr. Narendra Singh Chawara : Applicant/
(Original Appellant)

In the matter between

Mr. Narendra Singh Chawara : Appellant
(Original Intervenor/
Applicant.)

Vs.

Mrs. Hemangini Kumari Prithvi Raj : Respondent.
(Original Petitioner)

Mr. Kevic Setalvad, Senior Advocate a/w Mr. Ameya Kulkarni, Mr. Abhishek Sawant, Mr. Amit Pradhan & Ms. Ujwala Deshmukh i/by Pradhan & Rao for the Appellant/Applicant.

Mr. Karan Bhosale a/w Ms. Neha Bhosale, Ms. Laveena Tejwani and Ms. Anuja Divadkar i/by NDB Law for the Respondent.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.
DATE : 25th APRIL 2024**

P.C. :

APPEAL NO.82 OF 2024

1. The present Appeal impugns an order dated 29th February 2024 by which the captioned Notice of Motion filed by the Appellant *inter-alia* seeking that the Appellant be served with citation by Respondent in the captioned Testamentary Petition came to be dismissed.

2. The captioned Testamentary Petition has been filed seeking letters of administration in respect of what is stated to be the last will and testament of one Dr.Govind Singh Chawara ("deceased/testator"). The Appellant is the nephew of the deceased/testator, being the son of the late brother of the deceased/testator. It appears to be not in dispute that on the death of the deceased/testator the only legal heir as per the provisions of the Hindu Succession Act, 1956 was the father of the Appellant, i.e. the brother of the Appellant. The father of the

Appellant is however stated to have relinquished his right in the estate of the deceased/testator as also filed an affidavit consenting to the grant of letters of administration of the said will. However, pending the grant of letters of administration, the Appellants father has passed away and it is thus that the Appellant now claims to have a caveatable interest in the estate of the deceased/testator for which reason, the caption Notice of Motion came to be filed, but was dismissed.

3. Mr. Setalvad, Learned Senior Counsel appearing on behalf of the Appellant, submits that the right to receive a citation accrued upon the Appellant on the death of his father. He submitted that the said right was an independent one and accrued for the first time on the death of his father. In support of this contention, he invited our attention to Schedule of the Hindu Succession Act, 1956 and pointed out that the Appellant was a class-II heir of the deceased/testator.

4. Mr. Setalvad then submitted that this issue had been squarely covered in a judgement of this Court in the case of

Dhirendra alias Bitu Ranjit Thakkar and Another Vs. Mahendra Balbhadra Thakkar¹ in which a Learned Single Judge of this Court *inter alia* held as follows, viz.

"In my view, merely because the father of the caveator who was also legal heir of the said deceased had filed affidavit confirming attestation of Will, it would not put an end to the caveatable interest of the son of attesting witness/beneficiary on his demise. The present caveator is entitled to independently contest the Will by raising objections permissible in law. If during the lifetime of the father of the caveator, if any evidence would have been led, the situation would have been different. In my view, if the executor of the Will is unable to prove the execution of Will of the testator for any reasons, the caveator will have right in the estate of the deceased testator. In my view, thus caveator has caveatable interest and is entitled to challenge the said Will."

Mr. Setalvad submits that the view taken by Learned Single Judge in the said judgment was upheld by the Division Bench of this Court in an Appeal filed from the said judgment. Basis this, he submitted that there could be no manner of doubt that the Appellant was entitled for service of citation as prayed for.

1 2014(3) Mh. L. J. 9

5. *Per contra*, Mr. Bhosale, Learned Counsel appearing on behalf of the Respondent, submits that the order impugned did not suffers from any infirmity. He submitted that that the father of the Appellant i.e. the brother of the deceased testator had in his life time relinquished all his rights in the estate of the deceased testator and had also filed an Affidavit consenting to the grant of Letters of Administration in respect of the said Will. He thus submitted that since this had been done in the life time of the Appellant's father, the Appellant would have no right in the estate of the deceased testator since there was no subsisting right, title and interest in the Appellant's father qua the estate of the deceased/testator. In support of his contention he placed reliance upon a judgment of the Hon'ble Supreme Court in the case of ***Elumalai alias Venkatesan and another Vs. M. Kamala and others***², and pointed out that in case the representor has died between the date of representation and the date of raising of the estoppel, the heir of the deceased representor is bound by the representation to the said extent as

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the representor would have been and succeeds to all the burdens of estoppel in respect thereof. He submitted that the Learned Single Judge had therefore correctly placed reliance upon the said judgement and dismissed the captioned Notice of Motion.

6. After having heard Learned Counsel, we find that a case has been made out for admission of the Appeal. A careful reading of the judgment of the Hon'ble Supreme Court upon which reliance was placed by Learned Counsel for the Respondent shows that the facts in that case were materially different inasmuch as relinquishment in that case was made for valuable consideration received. There is no such contention in the present case. In our view, the matter requires consideration.

7. Hence **"Admit"**.

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8. In view of above, there will be interim order in terms

of prayer clauses (a) and (b) which read thus :-

"(a) pending the hearing and final disposal of the present Appeal, it is just, fair, necessary, convenient and equitable and in the interest of justice that this Hon'ble Court may be pleased to stay the operation, execution and implementation of the Impugned Order dated 29th February, 2024 passed in Notice of Motion No.56 of 2019 in the Testamentary Petition No.2278 of 2018 passed by the Learned Single Judge of this Hon'ble Court;

(b) pending the hearing and final disposal of the present Appeal, this Hon'ble Court be please to stay the grant of letters of Administration with the alleged Will dated 13th April, 2017 of late Govind Singh Chawara annexed in the Testamentary Petition No.2278 of 2018 in favour of the Petitioner, i.e. Respondent herein."

9. The captioned Interim Application is accordingly disposed of.

10. List the Appeal for hearing in due course.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)