

VS.

Mr. Cherag Balsara, i/b. Khona & Kayser and Usha Gadagkar for applicant/petitioner.

Mr. Rushabh Sheth a/w. Ms. Pratibha Rupnawar and Ms. Suveena Shetty, i/b. Samatva Legal Associates for respondent/caveator.

CORAM : MANISH PITALE, J.
DATE : 27th FEBRUARY, 2024

P.C. :

. Heard learned counsel for the parties.

2. By this application, the applicant/petitioner is seeking dismissal of the caveat filed by the caveator/respondent.

3. The learned counsel for the applicant submits that in the facts of the present case, the caveator/respondent cannot be said to have any caveatable interest to maintain the caveat. It is submitted that the caveator admittedly does not claim to be a legal heir of the deceased and if the facts placed before this Court are appreciated in the correct perspective, it can be said that the caveator is claiming right in part of the estate of the deceased,

adverse to the interest of the deceased. These twin factors are enough to demonstrate that the caveat is not maintainable and hence, it deserves to be dismissed.

4. It is submitted that in any case, the apprehensions expressed by the caveator pertain to title in one of the properties. It is a settled position of law that the probate Court does not decide questions of title and jurisdiction is to be exercised only to examine as to whether the subject Will is indeed a validly executed last Will and testament of the deceased. Reliance is placed on the judgment of the Supreme Court in the case of *Krishna Kumar Birla vs. Rajendra Singh Lodha and others* [2008 (4) SCC 300] and judgment of this Court in the case of *Ashokkumar Krishnakumar Shukla alias Munna vs. Mr. Mohammed Rafiq Haji Usman Momin* [2014 (2) Mh.L.J. 135].

5. On the other hand, the learned counsel for the caveator submits that a perusal of the schedule annexed to the probate petition, would show that entry Nos.36 to 44 therein, claim that the property, which is the subject matter of the said entries, was owned by a proprietary concern of which the deceased was the sole proprietor. This is completely contrary to the claim of the caveator. He claims right to the extent of 25% in the said property on the basis that his wife was a partner having 25% share in a firm, in which the deceased had 75% share and according to the caveator, the said property was an asset of the partnership firm. It is submitted that the caveator already has letters of administration granted in his favour in respect of 25% share in the said properties lying to the credit of his deceased wife. According to the caveator, the grant of probate will trench upon the rights of the caveator and it would have an adverse effect on a suit filed by the caveator alongwith his children before this Court. Reference is made to Suit

No.603 of 2015 which, *inter alia*, seeks a declaration in respect of 25% share in the said properties held by the deceased wife of the caveator.

6. This Court has considered the rival submissions. It is an admitted position that the caveator does not have claim to be a legal heir of the deceased. His real concern is about the claim made in entry Nos.36 to 44 of the schedule annexed to the probate petition. The caveator apprehends that if the probate is granted, it will adversely affect the right to the extent of 25% in the aforesaid properties, claimed by the caveator and the grant of probate would be in the teeth of the aforesaid letters of administration granted in his favour on 10.12.2013 by this Court. The probate may also adversely affect the claims made by the caveator in the aforesaid Suit No.603 of 2015.

7. The real question is, as to whether the caveator can be said to have caveatable interest in the facts and circumstances of the present case. The Supreme Court, in the case of **Krishna Kumar Birla vs. Rajendra Singh Lodha and others** (*supra*), considered the principle of law on the aspect of caveatable interest. It was held that what would be caveatable interest would depend upon the fact situation of each case. But, at the same time, it was recognized that the probate Court does not, in any manner, decide questions of title. The Supreme Court referred to various judgments on the said aspect of the matter and thereafter, concluded that the probate Court does not decide any question of title or of existence of the property itself. It was further held that a separate suit would certainly be maintainable, if a question of title arises.

8. In the case of **Ashokkumar Krishnakumar Shukla alias Munna vs. Mohammed Rafiq Haji Usman Momin** (*supra*), in similar circumstances, this Court held as follows:

“7. In my view, since the caveators are not one of the legal heirs, even if the petition would have been rejected for any reasons and the property of the deceased would have been devolved on intestacy, the caveator would not have claimed any right, title or interest in the property as per Succession Law applicable to the parties. Such allegations of fabrication and disputing the genuineness by the third party in my view cannot be raised in the affidavit in support of the caveat. If such allegations would have been made by the legal heirs of the deceased testator, situation would have been different.

8. As far as submission of Mr. Godbole, learned counsel that in the schedule to the probate petition, petitioner has inter alia prayed for probate in respect of the larger property contrary to the legacy bequeathed by the testator under the will is concerned, in my view even if this court while exercising testamentary jurisdiction grants probate as claimed as per schedule of assets and properties, the court would not decide the title in respect of the deceased testator in respect of such properties described in schedule to the petition. If executor or beneficiary applies for implementation of probate, in respect of the property belonging to third party, such third party can apply for revocation of grant u/s 263 of the Indian Succession Act or can file independent suit for adjudication of his title. The grant of probate by this court would not conclude the title of the testator in the property described in the Will or schedule to the probate petition.”

9. In view of the above, this Court is of the opinion that there is no question of any issue pertaining to title in any of the properties, being decided by this Court, while considering the probate petition filed by the applicant. This sufficiently takes care of the apprehension expressed on

behalf of the caveator with regard to the right claimed in the aforesaid properties to the extent of 25% share held by the deceased wife of the caveator as a partner in a partnership firm of which the deceased was a partner to the extent of 75% share.

10. In the present case, Suit No.603 of 2015 is already pending in this Court. The said suit would certainly decide the *inter se* rights between the parties in respect of the said properties. It is evident that even if probate is to be granted in the present petition, that in itself would not deprive the caveator from pursuing his claim in Suit No.603 of 2015, as this Court would not be deciding any question of title.

11. In view of the above, this Court is of the opinion that the application deserves to be allowed. The application is allowed and the caveat is dismissed, subject to the observations made hereinabove.

12. The department shall now proceed further expeditiously in accordance with law.

(MANISH PITALE, J.)