

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION**

**INTERIM APPLICATION NO. 2034 OF 2019
IN
TESTAMENTARY SUIT NO. 136 OF 2019
IN
PETITION NO. 1091 OF 2019**

Joslyn Pereira ... Applicant

In the matter between :

Joslyn Pereira ... Plaintiff
Versus
Vilma Pereira and Keith
Pereira & Ors. (Caveators) ... Defendants

Mr. Denzil D'mello for the Applicant.
Mr. Rohit Gupta a/w Jimish Shah and Ms. Vishwa Bhatt and
Anston Vaz i/by Divya Shah Associates for Defendants.

CORAM: MANISH PITALE, J.

DATE : 5 FEBRUARY 2024

P.C. :

. Heard learned counsel for the parties.

2. By this application, the applicant/petitioner is seeking dismissal of the caveats. It is submitted on behalf of the applicant that none of the caveators are disputing the execution of the subject Will and since the jurisdiction of the Court, considering this petition for grant of letters of administration with Will is

limited to the question of valid execution of the subject Will as the last Will and testament of the deceased testator, the nature of dispute sought to be raised in the caveat is beyond the jurisdiction of this Court in the present proceedings. It is submitted that if at all, the caveators have any grievance, they would be at liberty to approach the competent Civil Court in order to obtain appropriate reliefs. It is submitted that since the present proceedings do not decide the title of the parties, the caveats deserve to be dismissed at this stage itself. Reliance is placed on judgment and order dated 29 March 2011 of the Division Bench of this Court in the case of ***Ramchandra Ganpatrao Hande alias Handege v/s. Vithalrao Hande & Ors.*** (Appeal No. 797 of 2010).

3. On the other hand, the learned counsel appearing for the caveators submits that although the factum of execution of the Will may not be disputed by the caveators, the manner in which the applicant is seeking grant of probate, particularly read with the schedule filed with the petition, the caveators are entitled to demonstrate before this Court that Clause 4 of the Schedule pertaining to alleged 50% rights in the terrace as per the subject Will in favour of the applicant cannot be granted. It is submitted that the aforesaid dispute does not raise the question of title and instead pertains to the true purport of the Will and the intention of the testator as per the contents of the Will. Reference is made to Section 255 of the Indian Succession Act, 1925 (hereinafter referred to as 'Succession Act') to claim that this Court has the

power to consider as to whether probate is to be granted subject to an exception whenever the nature of a case requires that an exception be made.

4. This Court has considered the rival submissions. Although the learned counsel appearing for the parties have made reference to certain agreements annexed to the affidavits in support of the caveat, for the present, in order to decide the present application, this Court is looking at the subject Will along with the contents of the petition read with the schedule annexed thereto.

5. A perusal of the Will shows the intention of the testator as regards the manner in which the property is to be bequeathed to the beneficiaries under the Will. A reference is made to ground floor of the property/building specifically named in the Will and there is also reference to built up floor space to be allotted to one of the beneficiaries. This appears in the backdrop of the fact that the property was agreed to be redeveloped. Reference is also made to the manner in which residue of the movable and immovable properties of the testator would be shared between the parties.

6. A perusal of the petition, shows that the petitioner is seeking grant of letters of administration in the context of the subject Will. In the schedule annexed to the petition, in Clause 4, the petitioner has specifically included 50% share in the terrace on the first floor as part of the bequeath in favour of the petitioner under the said

Will. This is the center of controversy and the bone of contention between the parties.

7. The affidavits filed in support of the caveat and the documents filed therewith indicate that according to the caveators, they are entitled to an opportunity before this Court in the present suit itself, to demonstrate that even if the letters of administration with Will annexed were to be granted, the same would be subject to the exception of the claim being raised by the caveators. In that context, reference is made to Section 255 of the Succession Act.

8. This Court has perused the aforesaid provision, which specifically provides that whenever the nature of a case requires that an exception be made, letters of administration with Will annexed shall be granted subject to such exception. The narrow question in this application before this Court is, as to whether a situation has arisen where the caveators can claim that this Court ought to exercise power under Section 255 of the Succession Act so that even if letters of administration with Will annexed are to be granted on the basis of the present petition, appropriate exception ought to be made.

9. This Court is of the opinion that in the facts of the present case, the caveators are entitled to an opportunity to demonstrate that their claim needs to be accepted and an exception has to be carved out by exercising power under Section 255 of the

Succession Act. In that sense, the caveators definitely have a caveatable interest and a right to contest the present petition. The insistence of the petitioner for grant of letters of administration in terms of the schedule to the petition, including Clause 4 thereof, has given rise to the aforesaid situation where it cannot be said that the caveat filed by the caveators deserves to be dismissed.

10. Insofar as the judgment of the Division Bench of this Court in the case of *Ramchandra Ganpatrao Hande alias Handege* (supra) is concerned, in the said case, the Division Bench while examining as to whether the Court, considering a probate petition or petition for grant of letters of administration with Will annexed, has power to grant interim reliefs under Section 269 of the Succession Act. In the facts of the said case, it was found that since Section 269(2) of the Succession Act applied to the parties, considering the narrow scope of the jurisdiction of the Court considering such a petition, no interim orders could be granted. In the process of considering the aforesaid issue, the Division Bench of this Court referred to the settled position of law that the limited jurisdiction of the Court considering such a petition pertains to the validity of the subject Will and as to whether the testator was of sound mind when the Will was executed.

11. There can be no quarrel with the said proposition, but in the facts of the present case, since an issue pertaining to Section 255 of the Succession Act may arise, the aforesaid judgment of the

Division Bench of this Court cannot come to the assistance of the applicant/petitioner.

12. In view of the above, the Application is dismissed.

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MANISH PITALE, J.