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

INTERIM APPLICATION (L) NO.20148 OF 2025

IN

CAVEAT (L) NO.19816 OF 2025

IN

PETITION NO.1131 OF 2025

(i) Ravi Parthasarathy]
(ii) Dr. (Mrs.) Vishpala Parthasarathy] ... Deceased

Rhea Parthasarthy,]
aged 40 years, Hindu, Indian]
Inhabitant of Mumbai,]
Occupation: Housewife, residing at]
1201/1202, Vinayak Aangan, Old]
Prabhadevi Road, Near VIP Showroom,]
Prabhadevi S.O., Mumbai - 400 025]
being the daughter and sole heir of the]
deceased above named.]

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In the matter between:

Rhea Parthasarthy,]
aged 40 years, Hindu, Indian]
Inhabitant of Mumbai,]
Occupation: Housewife, residing at]
1201/1202, Vinayak Aangan, Old]
Prabhadevi Road, Near VIP Showroom,]
Prabhadevi S.O., Mumbai - 400 025]
being the daughter and sole heir of the]

deceased above named.] ... Petitioner

V/s.

Sonali Nimesh Lokhandwala,]
residing at A-1/7, Satyadarshan CHS,]
Malpa Doongri No.3, Andheri East,]
Mumbai - 400 093.] ... Caveator

And

Smruti Co-Operative Housing Society]
Ltd. registered under the Provisions of]
the Maharashtra Co-operative Societies]
Act 1960, bearing Registration No.]
Bom/ WHW/ HSG/ TG/ 7881 of 1993-]
94 having its address at Plot No.20,]
Phirozshah Mehta Road, Santacruz]
(West), Mumbai - 400 054.] ... Respondent

Mr. Ankit Lohia a/w Kshitij Madekar, Murari Madekar, Sachin Kudalkar i/by M/s Madekar & Co. for the Applicant/Petitioner
Ms. Mamta Sadh a/w Ms. Devika Kakoo i/by Mr. S. G. Lakhani
for the Caveatrix.

CORAM : Kamal Khata, J.
RESERVED ON : 28th July 2025.
PRONOUNCED ON : 3rd September 2025.

JUDGMENT:

1. By the present Application, the Applicant *inter alia* seeks dismissal of the Caveat filed by the Caveatrix in the Petition. The Petition itself seeks grant of Letters of Administration of the Joint Will and Testament dated 4th

November 2018 (Exh.B Page 21 to the Petition) and Joint Codicil dated 31st May 2019 (Exh.B1 Page 33 to the Petition) of the deceased, who were the adoptive parents of the Applicant-Petitioner.

BRIEF FACTS:

2. The Applicant is the duly adopted daughter of Mr. Ravi Parthasarathy and Dr. (Mrs.) Vishpala Parthasarathy (hereinafter jointly referred to as “the said deceased”). The Order of Adoption is annexed at Exh. A, Page 19 to the Interim Application. They expired on 27th April 2022 and 6th November 2023 respectively. The Joint Will dated 4th November 2018 and a Joint Codicil thereto dated 31st May 2019 executed by them are hereinafter collectively referred to as “the said Joint Will”. The Applicant is the sole surviving Class I legal heir and next of kin of the said deceased, under the Hindu Succession Act, 1956.

3. The Applicant was constrained to file the Petition seeking grant of Letters of Administration in respect of the said Joint Will of the said deceased because the named executors under the said Joint Will renounced their office as Executors and Trustees of the said Joint Will their

communications dated 13th December 2022 (Exh.C1 Page 63 to the Petition), dated 20th September 2024 (Exh.C2 Page 65 to the Petition), dated 21st September 2024 (Exh.C3 Page 66 to the Petition),

4. The Caveatrix claims to be the maternal cousin of the deceased, Dr. (Mrs.) Vishpala Parthasarathy. She filed her caveat in the present Petition on 10th June 2025, seeking to “*be heard*” in the matter. Her caveat rests on two grounds: (i) nomination in respect of the flat of Dr. Vishpala Parthasarathy, which was expressly excluded from the said Joint Will; and (ii) a bequest of ₹ 30 lakhs made to her under the said Joint Will.

5. By this Interim Application the Applicant seeks dismissal of the Caveat, on two grounds: (i) the Caveatrix has not challenged the genuineness, existence or validity of the said Joint Will, and (ii) her entire claim is founded only upon an alleged nomination, which does not confer any ownership rights in favour of the nominee.

Submissions on behalf of the Applicant –

The Caveatrix has no caveatable Interest

6. Mr Lohia, learned Counsel for the Applicant, submits

that the Caveatrix does not have any caveatable interest in respect of the said Joint Will, and on this ground alone, the Caveat is liable to be dismissed. He submits that the right to maintain a caveat against the grant of probate or letters of administration is not available to every person who merely asserts a general or speculative interest in the estate of the deceased. Only a person whose claims arise through a recognized line of succession, and whose rights are likely to be defeated by the grant of a probate or letters of administration, can be said to possess a caveatable interest.

7. In the present case, admittedly, the Applicant, being the daughter of the said deceased is a Class I legal heir of the said deceased. The Caveatrix on the other hand claims to be the maternal cousin of the deceased Dr. (Mrs.) Vishpala Parthasarathy. Therefore, even if the present petition was to fail, the Caveatrix could not, in any circumstance, succeed to any part of the estate of the deceased. This, by itself, demonstrates that the Caveatrix has no caveatable interest in the estate of the deceased whatsoever.

8. Reliance is placed on the following judgments of the Hon'ble Supreme Court and the Hon'ble Bombay High Court:

a. Krishna Kumar Birla v. Rajendra Singh Lodha¹

85. We may, by way of example notice that a testator might have entered into an agreement of sale entitling the vendee to file a suit for specific performance of contract. On the basis thereof, however, a caveatable interest is not created, as such an agreement would be binding both on the executor, if the probate is granted, and on the heirs and legal representatives of the deceased, if the same is refused.

86. The propositions of law which in our considered view may be applied in a case of this nature are: (i) To sustain a caveat, a caveatable interest must be shown. **(ii) The test required to be applied is : does the claim of grant of probate prejudice his right because it defeats some other line of succession in terms whereof the caveator asserted his right.** (iii) It is a fundamental nature of a probate proceeding that whatever would be the interest of the testator, the same must be accepted and the rules laid down therein must be followed. The logical corollary whereof would be that any person questioning the existence of title in respect of the estate or capacity of the testator to dispose of the property by Will on ground outside the law of succession would be a stranger to the probate proceeding inasmuch as none of such rights can effectively be adjudicated therein.

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89. While determining the said question, the law governing the intestate succession must also be kept in mind. The right of the reversioner or even the doctrine of “*spes successionis*” will have no application for

¹ (2008) 4 SCC 300

determining the issue in a case of this nature.

...(emphasis supplied)

b. **Surya Prakash S. Makharia v. Pramod Kumar Makharia²**

“13. A caveatable interest denotes the interest in the estate of the testator which may be affected by grant of Probate of the Will of the deceased. By its very nature, the existence or otherwise of a caveatable interest, would depend upon the facts of a given case. Whether the grant of Probate or Letters of Administration would prejudice the right of the caveator would be a barometer on which the existence of a caveatable interest can be tested. For that purpose, the law governing intestate succession qua the deceased also needs to be kept in view. If the caveator is likely to succeed in case of intestacy, the existence of caveatable interest can hardly be put in contest.

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16. A conjoint reading of the propositions culled out in clauses (ii) and (iii) of paragraph 86 spells out the test which is to be applied to ascertain the existence of a caveatable interest, namely, “the Caveator ought to be in a position to show that if the grant of Probate or Letters of Administration is made it will defeat his claim of succession or inheritance to the estate of the deceased for the reason that it defeats some other line of succession. If the Caveator is likely to inherit a very small part of the estate of the deceased in the event the Probate or Letters of Administration, as the case may be, is not granted, it can be said that the Caveator has

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2024 SCC OnLine Bom 2063

a caveatable interest. Conversely, if the Caveator questions the existence of title in respect of the estate or capacity of the testator to dispose of the property by Will on a ground outside the law of succession, ordinarily, he can be termed as a stranger to the Probate proceeding.”

...(emphasis supplied)

c. **Bindia Kripalani v. Naresh Nathulal Pal**³

“These are the Petitioner's Motions for dismissal of the Caveat on the ground that the Caveators have no caveatable interest. The Caveators are not relatives or heirs of the deceased, but are the deceased's servants or employees. Mr. Kanade for the Caveators does not dispute that there is no kinship. He only says that the Caveators are legatees under some previous Will. However, admittedly, the Caveators have made no steps to obtain Letters of Administration or probate in respect of that alleged previous Will. **Even if the present Petition for Letters of Administration with Will annexed fails, the Caveators cannot possibly succeed to any part of the estate.**”

2. All the three Motions are made absolute. As the Caveats stand discharged, the Petition shall proceed as an uncontested Petition.”

...(emphasis supplied)

d. **Ashitkumar Surendra Mehta v. Trilochanaben Thakorlal Fojdar**⁴

“10. In view of the clear legal and factual position is brought on record, caveators are not the next kin and kith of the deceased. They are not entitled to inherit property of the deceased. The

³ 2016 SCC OnLine Bom 6633

⁴ 2008 SCC OnLine Bom 252

plaintiff is, thus, justified in contending that the caveators have no locus or caveatable interest to maintain the present caveat filed by them.”

The Caveatrix has not challenged the said Joint Will

9. Mr. Lohia submits that the Caveatrix has not challenged the legality, genuineness, existence or the validity of the said Joint Will. On the contrary, the Caveatrix wrongly claimed to be a beneficiary of the said Smruti Apartment under the said Joint Will.

10. He submits that the very purpose of filing a caveat itself is to challenge the existence, legality, validity and/or genuineness of a will. In a petition seeking grant of probate or letters of administration, the sole issue that can be raised and can be adjudicated by the Testamentary Court is whether the Will, in respect of which probate or letters of administration is sought, is a legal and valid will. Therefore, in order to maintain a caveat, it absolutely imperative for the Caveatrix to dispute/question the validity and legality of the said Joint Will.

11. He submits that in the entire Affidavit in support of her caveat, the Caveatrix has not challenged the legality, genuineness and/or the validity of the said Joint Will. The

Caveat is, therefore, liable to be dismissed.

12. Reliance is placed on the judgment of the Division Bench of the Hon'ble Bombay High Court in the case of **Dr. Meherji Aspendiar Oshtori v. Kaikhosrow Aspendiar Oshtori**⁵, the relevant paragraphs of which have been reproduced hereinunder:

“4. Perusal of the impugned order discloses that after referring to the said para, the learned single Judge in that regard has observed that the affidavit in support of the caveat, apart from making the said submission, nowhere discloses any factual matrix which could help the Court to decide the issue regarding the legality and validity of the Will. Indeed, mere submission that the Will is invalid, illegal and fraudulently prepared and not enforceable in law, would not be sufficient to raise the dispute regarding the legality and validity of the Will. For the purpose of consideration of issue regarding the legality and validity of a Will, it is necessary for the caveator to disclose the basic facts which could lead to the conclusion about the illegality or invalidity of the Will. Undisputedly, the affidavit in support of the caveat does not disclose any such fact which could reveal the Will to have been obtained fraudulently or the Will to be invalid or illegal. Being so, no fault can be found with the impugned order wherein it has been held by the learned single Judge that the caveators, apart from making mere submission, have not actually disputed that the Will was duly signed and attested and that the attestor was in the right frame of mind to make the Will.”

...(emphasis supplied)

C. Nomination in by the deceased member does not vest title

⁵ Appeal No. 64 of 2007, in Notice of Motion No. 122 of 2006, in Testamentary Suit No. 33 of 2006

with the nominee

13. Mr. Lohia submits that the Caveatrix has sought to contend that she is a beneficiary under the said Joint Will in respect to the Smruti Apartment, on the basis that the said Smruti Apartment having been expressly excluded from the said Joint Will, was allegedly nominated in her favour by the deceased Dr. (Mrs.) Vishpala Parthasarathy.

14. He submits that it is trite law that nomination does not confer any title upon the nominee. A nominee merely acts as a trustee for the legal heirs and holds the property so nominated until a conclusive determination of succession is made. In any event, a mere nomination can neither override the rules of succession, nor vest any ownership rights or interest in favour of the nominee.

15. He submits that Section 154B-13 of the Maharashtra Co-operative Societies Act, 1960, expressly provides that a nominee shall be admitted only as a “**provisional member**” until the legal heirs of the deceased are duly admitted as members in place of the deceased.

16. In the circumstances, the contention of the Caveatrix that she is entitled to the Smruti Apartment on the basis of

the alleged nomination, is wholly misconceived and is liable to be rejected.

17. He relies on the judgment of the Hon'ble Supreme Court of India in *Sarbati Devi and Anr. v. Usha Devi*⁶ particularly paragraph no. 12 thereof which reads as under:

“12. Moreover there is one other strong circumstance in this case which dissuades us from taking a view contrary to the decisions of all other High Courts and accepting the view expressed by the Delhi High Court in the two recent judgments delivered in the year 1978 and in the year 1982. The Act has been in force from the year 1938 and all along almost all the High Courts in India have taken the view that a mere nomination effected under Section 39 does not deprive the heirs of their rights in the amount payable under a life insurance policy. Yet Parliament has not chosen to make any amendment to the Act. In such a situation unless there are strong and compelling reasons to hold that all these decisions are wholly erroneous, the Court should be slow to take a different view. The reasons given by the Delhi High Court are unconvincing. We, therefore, hold that the judgments of the

⁶ (1984) 1 SCC 424

Delhi High Court in *Fauza Singh case* [AIR 1978 Del 276] and in *Uma Sehgal case* [AIR 1982 Del 36 : ILR (1981) 2 Del 315] do not lay down the law correctly. They are, therefore, overruled. We approve the views expressed by the other High Courts on the meaning of Section 39 of the Act and hold that a mere nomination made under Section 39 of the Act does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the hand which is authorised to receive the amount, on the payment of which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them.”

Submissions by the Caveatrix

18. *Per Contra*, Miss Sadh, learned counsel for the Caveatrix, submitted that the term *caveatable interest* is not defined under the Indian Succession Act, 1925. She contends that, law on this subject has evolved through judicial interpretation. Upon a conjoint consideration of various pronouncements and the provisions of the Indian Succession

Act, the expression *caveatable interest* has been judicially recognized and understood. Reliance is placed on section 283 (1) (c) of the Indian Succession Act, 1925 which provides:

“Issue citations calling upon all persons claiming to have an interest in the estate of the deceased to come and see the proceedings before the grant of Probate or Letters of Administration”.

19. She further relies on the decision of this Court in *Maneklal V Shah v Jagdish C. Shah*⁷ in support of her above contention.

20. She submits that the question of *caveatable interest* may arise at two stages- first, at the time of filing of the caveat, and second, at the time of revocation of the grant under section 263. However, the underlying principle governing both stages remains the same. In this regard, she places reliance on decisions ranging from *Abhiram Dass v Gopal Dass*⁸ to *Jadeja Naval Singh Mohobat Singh & Ors v Mahesh Govind Trivedi & Ors*. Our Courts, she argues, have consistently held that even the slightest interest in the estate

⁷ (1970) 72 Bom LR 719

⁸ ILR (1889-90) 17 Cal 48

entitles a person to lodge a caveat and contest the grant of the probate. Referring to *Krishnakumar Birla V Rajendar Singh Lodha & Ors* (supra) and *G. Gopal v C Bhaskar & Ors*, (supra) she stresses that a Caveator must show “some interest” in the estate derived from the deceased by inheritance or otherwise.

21. Basis the above, she contends that since the deceased, Dr. (Mrs.) Vishpala Parthasarathy expressly excluded the two residential flats from the Joint Will and executed a nomination in favour of the Caveatrix - further recognised by the Dy. Registrar granting provisional membership - the Caveatrix has a *caveatable interest* sufficient to maintain a Caveat. She also points out that the Caveatrix is a beneficiary to a substantial bequest of ₹ 30,00,000/- under the Will, thereby reinforcing her direct and special interest in the estate of the deceased and entitling her to insist that the Petitioner proves the Will in solemn form.

22. Reliance is placed on the following portions of the judgement in *Krishnakumar Birla v Rajendar Singh Lodha & Ors* (supra) where the Court held that a person would have *caveatable interest* if he/she is (i) likely to succeed to the

estate of the testator, or (ii) has a “special interest” in the estate. The Caveatrix, she submits, falls in the latter category.

“58. ... a person to whom a citation is to be issued or a caveator must have some interest in the estate of the testator...”

23. Referring to paragraph 173 of the said judgement

“173. The appellants are not the legatees of the said Will, they are not the beneficiaries thereunder. They being merely executors in our opinion, would not clothe them with a right to lodge a caveat as by reason thereof they did not derive any Caveatable interest in the estate of the PDB”

she submits that in the present case the Caveatrix is a legatee under the Will, having been bequeathed a substantial sum of ₹ 30 lakhs.

24. She also relies on paragraph 4 at page 83-84 of judgement in *G Gopal v C. Bhaskar & Ors* (supra)

“It is well settled that if a person who has even a slightest interest in the estate of the testator is

entitled to file a caveat and contest the grant of
Probate of the Will of the testator"

Where the Supreme Court observed that the concept of "special interest" is well settled. She submits that the Caveatrix qualifies, having "special interest" being both a nominee to Flat No. 4 Smruti CHSL, and a legatee. Until overruled by a Constitution Bench, *G.Gopal v C. Bhaskar* continues to be a binding precedent.

25. Referring to the relevant portion of paragraph 23 of *Jadeja Navalsing Mohabatsing & Ors v Mahesh Govind Trivedi & Ors.*⁹ she contends that the Caveatrix's right would be displaced upon grant of Probate, which itself substantiates her standing.

26. As regards the Applicant's contention that the Caveatrix has not challenged the Will, she submits that no copy of the Will or the testamentary proceedings has been served on her, thereby depriving her of the opportunity to challenge it.

27. Relying on *H. Venkatachala Iyengar v B N Thimmajamma & Ors.* she submits that the execution of the

⁹ 2016 (4) BCR 800

Will is surrounded by suspicious circumstances. She contends that the following scenarios create suspicious circumstances:

- i. Clause 3.2 of the alleged Will categorically excludes the 2 flats at Milan and Smruti and still the same are included in the Schedule of the Petition.
- ii. There is no doctor's certificate appended either to the Joint Will or the Codicil certifying the sound state of mind of the testators;
- iii. Both the alleged Will and Codicil are not registered;
- iv. Both the alleged Will and Codicil are not notarized;
- v. The Petitioner has not mentioned Flat no. 1302 of Vinayak Aangan in the Schedule of the petition.
- vi. The Petitioner has not mentioned the money advanced towards the 'Turf view' Flat at Mahalaxmi in the Schedule of the petition.
- vii. The deceased had a number of jewelry items. However, there is no mention of the jewelry in the schedule of the petition.

(Clause 9.2 mentions exclusion of jewelry)

28. She further submits that the exclusion of Flat No. 4 at Smruti CHS, from the Joint Will, coupled with the nomination in her favour, makes clear the deceased's intention to bequeath the flat to the Caveatrix. Grant of Probate in respect of this flat would extinguish her independent right to institute a civil Suit to establish her title. She asserts that the Applicant has falsely claimed in paragraph 4 of the IA that *"under the joint Will of the said deceased, the said Flat is bequeathed to the Applicant"*

29. She relies on clause 3.2 of the Will, which specifically excludes the said Flat in Smruti CHSL from disposition. Therefore, the residuary clause 13 in the Joint Will, which bequeaths all the rest and residue of their properties, would be excluded on account of the words *"not specifically dealt with in this our Will"*.

30. She contends that the false assertion made by the Applicant in paragraph 4 of the IA attracts the principle laid down in *S. P. Chengalvaraya Naidu v Jagannath & Ors*¹⁰ and

¹⁰ 1994 (1) SCC 1

the Applicant would fall within the scope and ambit of a person, who has not come to the Court with clean hands and liable to be thrown out at any stage.

31. She accordingly seeks dismissal of the IA.

Rejoinder to the submission of the Caveatrix

32. He submits that although the Caveatrix has, in no manner whatsoever, challenged the said Joint Will itself, she has nevertheless sought to contend that she possesses a caveatable interest in the present matter and, on that basis, claims a right to “*be heard*”.

33. In support of her contentions, the Caveatrix has relied upon the following judgments, which either have no application to the facts of the present case, or in fact, directly contradict her own submissions.

34. He submits that the judgment of the Hon’ble Calcutta High Court in *Abhiram Dass v. Gopal Das*¹¹ has no applicability or bearing to the facts of the present matter. That decision merely holds that a person claiming title adverse to the deceased testator does not have a caveatable interest. (see internal page no. 52 of the judgment). In fact,

¹¹ ILR (1889) 17 Cal 48

the above judgment runs contrary to the contentions as put forth by the Caveatrix herself. A bare perusal of her affidavit in support of her caveat, indicates that that the Caveatrix, is in effect, attempting to challenge the authority of the said deceased to bequeath her properties through the said Joint Will.

35. He submits that the judgement of the Hon'ble Bombay High Court in *Maneklal Shah v. Jagdish Shah*¹² also has no applicability or bearing to the facts of the present matter. The decision merely holds that any number of caveats to the grant of probate or letters of administration can be filed, and that the Testamentary Department of the court is bound to take each of such caveats on file (see internal page no. 721). Needless to state that in the present case, the question of number of caveats being filed, does not arise.

36. *He submits that the judgement* of the Hon'ble Supreme Court in *G. Gopal v. C. Bhaskar*¹³, relied upon by the Caveatrix to contend that any person with “*even a slight interest*” is entitled to file and maintain a caveat, is misconceived. The facts of that matter were materially

¹² (1969) 72 Bom. L.R. 719

¹³ AIR 2009 SC 1232

different, as the case dealt with the caveatable interests of the grand children of the testator.

37. In any event, the above judgment of the Hon'ble Supreme Court did not consider the development of law as on caveatable interest, as comprehensively analyzed by the Hon'ble Supreme Court in *Krishna Kumar Birla* (supra). Accordingly, reliance on *G. Gopal* (supra) is misplaced and cannot assist the Caveatrix.

38. The fact that the Hon'ble Supreme Court, in *G. Gopal* (supra) failed to apply the principles earlier laid down in *Krishna Kumar Birla* (supra), has already been examined by various High Courts. The relevant findings of the Hon'ble Delhi High Court, Bombay High Court and Calcutta High Court, respectively, are reproduced hereinbelow:

*i. Vinod Kumar Aggarwal v. State and Ors.*¹⁴

"40. Pursuant to the judgment passed in Krishna Kumar Birla v. Rajendra Singh Lodha & Ors. (supra) on 31.03.2008, the Hon'ble Apex Court in another decision dated 03.09.2008 in G. Gopal v. C Baskar and Ors (supra) held as under: - "That being the position, we must hold that the respondents had caveatable interest in the estate of the testator and, therefore, they are entitled to be served before the final order is passed. It is well settled that if a person who has even a slight

¹⁴ FAO(OS) 32/2020

interest in the estate of the testator is entitled to file caveat and contest the grant of probate of the will of the testator."

41. It appears that the Hon'ble Apex Court in the case had not taken note of the judgment passed in the case of Krishna Kumar Birla v. Rajendra Singh Lodha & Ors. (supra) and held that even a slight interest in the estate of a testator would entitle a person to file a caveat and contest the grant of probate of will of the Testator.

42. The Hon'ble Apex Court later in its judgment dated 10.03.2010 in the case of Jagjit Singh and Ors. Vs. Pamela Manmohan Singh: (2010) 5 SCC 157, noted that the views taken by the Hon'ble Supreme Court in Krishna Kumar Birla v. Rajendra Singh Lodha & Ors. (supra) and G. Gopal v. C Baskar and Ors (supra) were conflicting and referred the issue to be considered by a Larger Bench. The said case Jagjit Singh and Ors. Vs. Pamela Manmohan Singh (supra) was thereafter withdrawn by the appellants and therefore, it appears that no reference is pending before a larger bench of the Hon'ble Supreme Court as on date.

43. In such circumstances, it would be apposite to note the principle laid down by the Hon'ble Supreme Court in the case of National Insurance Co. Ltd. v. Pranay Sethi: (2017) 16 SCC 680. The same reads as under:

"16. Presently, we may refer to certain decisions which deal with the concept of binding precedent.

17. In State of Bihar v. Kalika Kuer alias Kalika Singh and others, it has been held: -

"10. ... an earlier decision may seem to be incorrect to a Bench of a coordinate jurisdiction considering the question later, on the ground that a possible aspect of the matter was not considered or not raised before the court or more aspects should have been gone into by the court deciding the matter earlier but it would not be a

reason to say that the decision was rendered *per incuriam* and liable to be ignored. The earlier judgment may seem to be not correct yet it will have the binding effect on the later Bench of coordinate jurisdiction. ..."

The Court has further ruled: -

"10. ... Easy course of saying that earlier decision was rendered *per incuriam* is not permissible and the matter will have to be resolved only in two ways -- either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits."

18. In *G.L. Batra v. State of Haryana and others*, the Court has accepted the said principle on the basis of judgments of this Court rendered in *Union of India v. Godfrey Philips India Ltd.*, *Sundarjas Kanyalal Bhatija v. Collector, Thane, Maharashtra* and *Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel*. It may be noted here that the Constitution Bench in *Madras Bar Association v. Union of India* and another, has clearly stated that the prior Constitution Bench judgment in *Union of India v. Madras Bar Association* is a binding precedent. **Be it clarified, the issues that were put to rest in the earlier Constitution Bench judgment were treated as precedents by latter Constitution Bench.**"

44. **Therefore, we are bound to follow the law as laid down by the Hon'ble Apex Court in *Krishna Kumar Birla v. Rajendra Singh Lodha & Ors.* (supra).**"

...(emphasis supplied)

ii. *Kusum Bharat v. Jagdish Asarpota*¹⁵

"35. Insofar as judgment of Supreme Court in case of *G. Gopal* (supra) relied upon by the

¹⁵ 2015 (1) Mh.L.J. 127

learned counsel appearing for the caveators is concerned, it is clear that the Supreme Court did not notice the judgment in case of Krishnakumar Birla v. Rajendra Singh Lodha (supra) in the said judgment.”

iii. *Pemla Ghosal v. Neelanjana Ghosal*¹⁶

*“12. The perceived conflict between the K.K. Birla and G. Gopal appears from the parameters as to what may amount to caveatable interest having been set in the former and a line in the latter saying that the slightest interest in the estate would allow the person a look-in. **K.K. Birla has referred to a plethora of previous judicial pronouncements** and, to the extent that it is held therein that judgments on the issue rendered in the context of the law as it stood prior to the 1956 Act were now no guide to throw light on the matter, it has not been doubted in G. Gopal. **In fact, G. Gopal did not notice or refer to K.K. Birla. The position in law is that if two conflicting precedents of equal binding value of a superior forum are cited, the Court can choose the one better-suited in the context.** It is on such basis that the dictum in K.K. Birla appears to be the more considered opinion of the Supreme Court that is apposite in the present context. **The “slightest interest” principle may be applicable to the class of objectors other than the relatives of the testator; but when a relative of a superior class survives the testator, a relative of an inferior class cannot have any interest in the estate of the testator if on the date of the protest or grant the relative of the superior class is alive.**”*

...(emphasis supplied)

¹⁶ 2011 SCC OnLine Cal 644

39. *He submits that the judgment of the Hon'ble Supreme Court in National Insurance Co. Ltd. v. Pranay Sethi*¹⁷ runs contrary to the Caveatrix's own contentions. The said judgment has held that a decision rendered by a bench of co-ordinate jurisdiction, is binding on a subsequent bench of the same strength, and that any decision rendered without considering the ratio of an earlier judgment of co-equal or larger bench is *per incuriam*. He therefore submits that reliance on *G. Gopal* (supra) is misplaced and ought not to be accepted.

40. *He further submits that the Hon'ble Bombay High Court in Jadeja Navalsing Mahobatsing and Ors. v. Mahesh Govind Trivedi and Ors.*¹⁸ does not in any manner support her contentions. On the contrary, the Court in that case held that a person not having any claim of title over the property of the deceased testator does not possess any caveatable interest. (see paragraph no. 21). A plain reading of the said judgment, in fact, fortifies the Applicant's submissions. Despite having no claim of title in the Smruti Apartment, the Caveatrix has maliciously sought to maintain the present caveat.

¹⁷ (2017) 16 SCC 680

¹⁸ 2016 (4) Bom. C.R. 800

41. He submits that the Caveatrix's reliance on the Hon'ble Supreme Court's judgement in *Radha Sundar Dutta v. Mohd. Jahadur Rahim*¹⁹ is wholly misconceived. That judgement merely lays down the principle that, where two interpretations of a document are possible, the construction which gives effect to all the clauses should be preferred. He submits that in a petition seeking grant of probate or letters of administration, the jurisdiction of the Court is confined to examining the legality and validity of the Will, and not to interpret its contents. Therefore, the said judgment has no application to the facts of the present case.

Conclusion

42. In light of the foregoing, he submits that, on the facts and circumstances of the present case, the Caveatrix does not possess any caveatable interest. The very purpose of filing a caveat is to challenge the legality, validity and/or genuineness of a will. The Caveatrix has neither demonstrated any caveatable interest nor raised any case to dispute the legality, validity and/or genuineness of the said Joint Will. On the contrary, while she claims a legacy under

¹⁹ AIR 1959 SC 24

the said joint Will, she simultaneously seeks to challenge it. A legatee claiming under the Will cannot, at the same time, question its validity. In the absence of any claim to the Smruti Apartment arising through any recognized line of succession, he submits that the Caveat is liable to be dismissed.

REASONS AND CONCLUSIONS:

43. Heard both Counsel and perused the record.

44. The short question that arises for consideration is: whether a person possesses a *caveatable interest* on (i) being nominated by the deceased in respect of an immovable property, and/or (ii) being a beneficiary under the Will.

45. Ms. Sadh, for the Caveatrix, relies on expressions such as “any interest”, “slightest interest”, “some interest” or “special interest” in the estate in support of her contentions.

46. Her argument based on the words “any interest” appearing in the Section 283 (1) (c) of the Indian Succession Act, 1925, read with the decisions in *Maneklal Shah (supra)*, *Abhiram Dass (supra)*, *Jadeja Naval Singh (supra)* and *G. Gopal vs. Bhaskar (supra)* is misconceived.

47. In *Maneklal Shah* (supra) the Court was concerned with the use of word “caveats” in section 284 (1) of the Succession Act. The issue there was whether multiple caveats could be filed, and it was held that each caveat would convert into a separate suit, unlike another bench’s view that all caveats merge into one suit. The reliance on the said decision, therefore, is misplaced.

48. Likewise, reliance on the word “otherwise” in *Abhiram Dass* (supra) is misconceived. The passage relied upon (quoted above) clearly emphasizes that the claim must be either by way of inheritance or by way of an interest in the estate itself. A mere nomination in her favour, cannot be equated with an interest in the estate so as to entitle the person to issuance of citation.

49. In this regard, the Supreme Court in *Challamma vs. Tilaga & Ors.*²⁰ held that a nominee cannot be treated as an heir or legatee.

50. Similarly, in *Om Siddharaj Co-operative Housing Society Ltd vs. State of Maharashtra & Ors.*²¹, the Court

²⁰ 2009 9 SCC 299

²¹ 1998 SCC OnLine Bom 243.

clarified that a nomination under Section 30 of the Maharashtra Co-operative Societies Act merely indicates the person with whom the society should deal, and does not confer ownership rights in the nominee to the exclusion of the legal heirs. Referring to *Gopal Vishnu Ghatnekar vs. Madhukar Vishnu Ghatnekar*²² the Court observed that the nominee or recognized legal representative merely holds the deceased's share and interest in trust for lawful heirs. The rights of the heirs are not lost, and the Society's role remains administrative until succession is duly determined by law or Court.

51. Admittedly, the Caveatrix is only a nominee of the flat. In my view therefore, the flat being excluded from the Will, coupled with a nomination in favour of the Caveatrix, will not confer a caveatable interest. She is not an heir under intestate succession who would otherwise benefit if the Will were invalidated.

52. The reliance on *Krishnakumar Birla (supra)* is unhelpful to the Caveatrix, and in fact supports the Applicant. Ms Sadh is unable to point out any paragraph in

²² 1981 SCC OnLine Bom 118.

the judgement which would substantiate her contention that a nominee of an immovable property would have caveatable interest.

53. Thus, in my view, the Caveatrix cannot be said to have a “special interest” in the estate, because a nominee is merely a trustee for the lawful heirs, and the Caveatrix is neither a legal heir nor a legatee of the flat under the Will.

54. In view of the aforesaid decisions, the argument that the Caveatrix has a caveatable interest in the property is devoid of merit.

55. It is admitted that the Applicant is the daughter of the deceased and sole heir in the event that the Will fails. In such a scenario, the Caveatrix would have to independently establish any claim to the flat by virtue of nomination through a separate Civil Suit. The filing of a Caveat, in these proceedings is not the remedy.

56. I find merit in Mr. Lohia’s submission that the Caveatrix has no rights whether the Will is proved or not. In either scenario, the Applicant, being the sole heir, is entitled to the estate. Whether or not the flat is specifically covered by the Will, the Applicant inherits the estate as heir.

57. There is further force in Mr. Lohia's reliance on the residuary clause in the Will, which vests all undisposed property specifically in the Applicant.

58. If the Caveatrix wishes to assert any claim, she must establish the same in independent civil proceedings, where she may not succeed given the settled law that a nominee is a trustee for the legal heirs. This Application must, therefore, succeed against the Caveatrix.

59. In these circumstances, a nominee being a trustee has no locus to file or maintain a caveat in Testamentary proceedings.

60. It is also admitted that the Caveatrix has been bequeathed a sum of Rs.30,00,000/- under the Will, which remains unchallenged. This further reinforces the Petitioner's case that the Caveatrix has no ground to oppose.

61. The contention that averments in the Petition regarding the bequest of the flat are false, does not by itself confer caveatable interest on the Caveatrix.

62. Consequently, reliance on *S.P. Chengalvaraya Naidu vs. Jagannath & Ors.*²³ is misplaced. A nominee/trustee has no

²³ 1994 (1) SCC 1

right to object to the heirs inheriting either under the Will or by intestate succession.

63. Ms Sadh's contention that if served with a copy of the Will and Petition, the Caveatrix could raise suspicious circumstances and challenge the Will, is untenable and contrary to her stand. The Caveatrix cannot approbate and reprobate to suit her convenience- she cannot simultaneously claim as a beneficiary under the Will and contest it.

64. Accordingly, the Interim Application is allowed in terms of prayer clauses (a) and (b).

65. However, it is clarified that the Caveatrix shall be at liberty to pursue independent civil proceedings, if so advised, to establish her rights as a beneficiary or as a nominee. This Court has not adjudicated upon such rights in the present Application.

(Kamal Khata, J.)