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

VINA ARVIND KHADPE
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Date: 2026.01.19 16:24:45 +0530

Mr. Narendra Singh Chawara,
S/o Ram Singh Chawara,
Aged 83 years,
Residing at S-29, Hanuman Nagar, Khatipura, Sirsi Road, Vaishali Nagra, Jaipur,Rajasthan. ***…APPELLANT***

~ VERSUS ~

Mrs. Hemangini Kumari Prithvi Raj Singh Chawara,
Aged 47 years, Occupation – Service, Hindu,
Residing at S-10, Hanuman Nagar, Khatipura, Sirsi Road, Vaishali Nagra, Jaipur, Rajasthan ***…RESPONDENT***

APPEARANCES:

for the Appellant	***Mr. Kevic Setalvad*** *a/w Mr. Abhishek Sawant, Mr. Ameya Kulkarni, Mr. Amit Pradhan & Ms. Ujwala Deshmukh i/b. Pradhan and Rao.*
for the Respondent	***Mr. Sunip Sen*** *a/w Mr. Udaybhanu Singh i/b. Zain A. K. Najam – Es – Sani.*

CORAM : B. P. COLABAWALLA &
AMIT S. JAMSANDEKAR, JJ.

RESERVED ON : 28th November 2025.

PRONOUNCED ON : 12th January 2026.

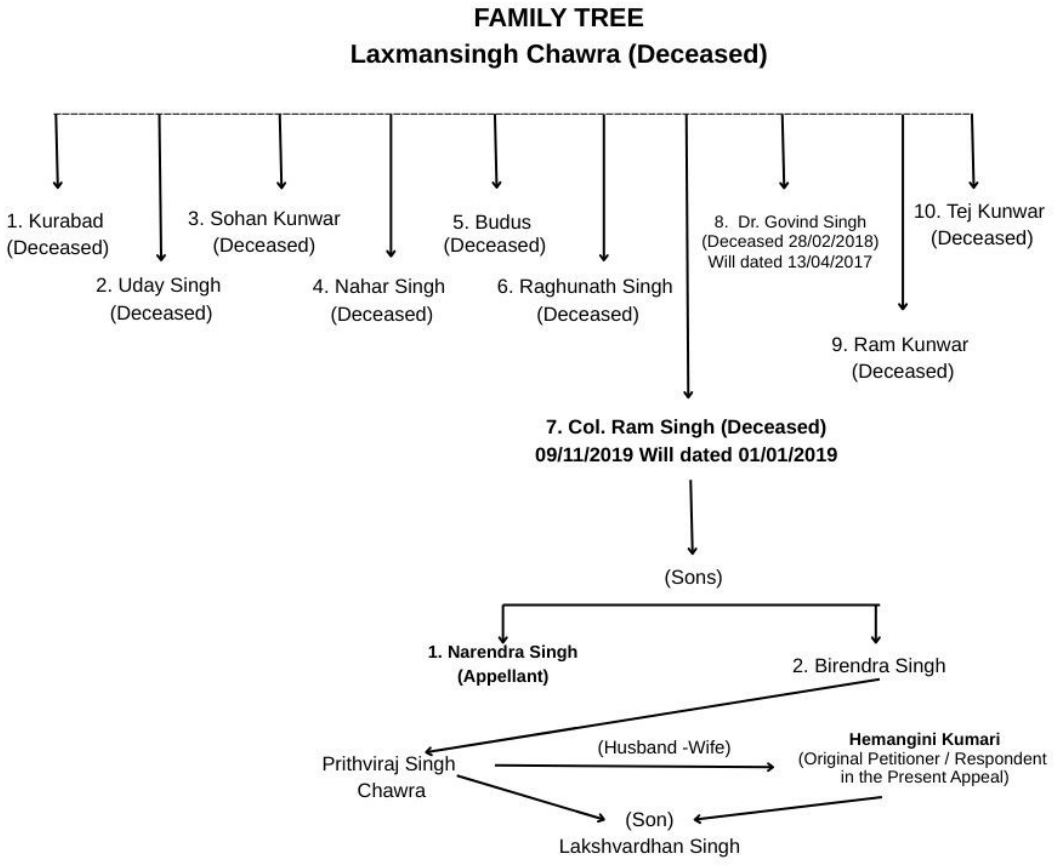
JUDGMENT (*Per Amit Satyavan Jamsandekar J.)****:-***

1. By the present Appeal, the Appellant has challenged the Order dated 29th February 2024, passed by the Learned Single Judge in Notice of Motion No. 56 of 2019 (***the Impugned Order***). By the Impugned Order, the Learned Single Judge has dismissed the Notice of Motion filed by the Appellant and held that the Appellant has no caveatable interest and directed the Testamentary Department to proceed with the Testamentary Petition in accordance with the law. The decision of the Learned Single Judge is, *inter alia*, based on the fact that the Appellant filed the Notice of Motion despite the fact that his father was alive and his father was one of the attesting witnesses to the Will. Further, his father had filed a consent affidavit in the Testamentary proceedings and waived the service of caveat. By a separate affidavit, the Appellant's father also relinquished his rights in the deceased's estate. Therefore, the Learned Single Judge held that there is no question of the Appellant claiming the status of legal heir of the deceased during the lifetime of his father or thereafter. By following the decisions of the Hon'ble Supreme Court in *B. L. Sreedhar v. K. M. Munireddy (dead) & ors*, (2003) 2 SCC 355 & *Elumalai alias Venkatesan & Ars. v. M. Kamala & ors.*, 2023 SCC OnLine SC 84, the Learned Single Judge employed the principles of estoppel, which, according to the Learned Single Judge, would have applied against the father

of the Appellant and hence would apply against the Appellant as well. In the facts of the present case, the Learned Single Judge has distinguished the decision of this Court in *Dhirendra alias Bitu Thakkar v. Mahendra Thakkar*, 2014 (3) Mh. L. J. 9, *(Dhirendra)* and a decision of the Division Bench dated 12th November 2013 in an appeal from *Dhirendra,* being *Appeal (L) No. 386 of 2013*.

2. Before we proceed with the rival submissions made on behalf of the Appellant and the Respondent, a few relevant facts, which are on record and explained to us during the hearing by the Learned Senior Counsels, Mr. Setalvad & Mr. Sen, are summarised herein below:

   i. Dr. Govind Singh Chawara (***Govind Singh***) and Ram Singh Chawara (***Ram Singh***) were real brothers. Ram Singh has two sons, Narendra Singh Chawara (***Narendra Singh***), (the Appellant in the present Appeal) and Birendra Singh Chawara (***Birendra Singh***). Birendra Singh has one son, Prithwiraj Singh, who is married to Mrs. Hemangini Kumari, (the Original Petitioner and the Respondent in the present Appeal). Mr. Prithwiraj Singh and Mrs. Hemangini Kumari have a son, Lakshavardhan Singh. Thus, Mrs. Hemangini Kumari is the grand-daughter-in-law of Ram Singh. The family tree on record, and not in dispute, is depicted herein below:



ii. On 13th April 2017, Govind Singh executed his Will and bequeathed his estate in favour of the Respondent and her son Lakshavardhan Singh. Govind Singh died on 28th February 2018. On the date of Govind Singh's death, the other siblings of Govind Singh [other than Ram Singh] were not alive. Therefore, Ram Singh was the sole surviving legal heir of Govind Singh. This is undisputed.

iii. The Respondent propounded the Will of Govind Singh dated 13th April 2017 and Probate proceedings were initiated by her, being Testamentary Petition No. 2278 of 2018. The Will of Govind Singh is attested by two witnesses, one of whom is Ram Singh. On 8th March

2018, Ram Singh affirmed an Affidavit by which he relinquished all his rights over Govind Singh's estate. Thereafter, on 13th April 2018, the Will of Govind Singh came to be registered by Ram Singh, Kan Singh Rathore and the Respondent under the Indian Registration Act before the Sub-Registrar of Assurances (VII), Jaipur, Rajsthan.

iv. On 22nd June 2018, the attesting witnesses, Ram Singh and Kan Singh Rathore, affirmed their respective affidavits, confirming the execution of the Will dated 13th April 2017 by Govind Singh. On 22nd June, 2018, Ram Singh independently affirmed an Additional Affidavit, which was filed in the Probate proceedings, by which he consented to the Testamentary Petition and also stated that the probate be granted in favour of the Respondent without service of any citation/notice upon him.

v. On 1st January 2019, Ram Singh also made a registered Will. By this Will, he bequeathed all his movable and immovable assets to the Respondent.

vi. On 11th February 2019, the Prothonotary and Senior Master issued the citation as per the Original Side Rules of the Bombay High Court. On the same day, the Appellant filed Notice of Motion No. 56 of 2019, which was the subject matter before the Learned Single Judge. By the said Notice of Motion, the Appellant sought directions against the Petitioner to serve the citation on the Appellant. Reliefs in the Notice of Motion were sought by the Appellant by making various allegations

against the Respondent and alleging that the Will dated 13th April 2017 is a false and fabricated document. The Appellant gave details of various Police Complaints made by him, and the fact that he sought forensic reports in respect of the Will dated 13th April 2017 of Govind Singh etc. The Appellant also alleged that he is in possession of a flat situated at Carter Road in Mumbai, and Dr. Govind Singh Chawara has mentioned his name as nominee in the Society's records. He has further alleged that Dr. Govind Singh Chawara was extremely close to the Appellant and that Dr. Govind Singh Chawara had mentioned to him that apart from the nomination of the Appellant, he did not execute any other document in respect of his estate. The Notice of Motion was opposed by the Respondent, *inter alia*, on the ground that the Appellant has no caveatable interest.

vii. During the pendency of the Notice of Motion filed by the Appellant, on 9th November 2019, Ram Singh died.

viii. On 27th January 2020, the Appellant filed an additional affidavit in support of the Notice of Motion, *inter alia*, stating that Ram Singh passed away on 9th November 2019, and therefore, in the changed circumstances, the Appellant now has a caveatable interest. It is further stated in the additional affidavit by the Appellant that irrespective of his father's affidavit in support of the Probate Petition, his caveatable interest is not affected. Without prejudice, it is further stated by the Appellant that he is entitled to independently contest the

Will by raising objections permissible in Law.

ix. Various police complaints filed by the Appellant against the Respondent have been produced on record. There are criminal proceedings initiated by Ram Singh against his own son, the Appellant. In fact, Ram Singh has stated in his Affidavit dated 25th June 2019 that the Appellant threatened him because he had filed an Affidavit in support of the Probate Petition. Though, the Appellant in the Memo of Appeal in para 19, has taken a ground that the Learned Single Judge failed to consider that the Appellant always had a good relationship with his father, Ram Singh, Mr. Setalvad the Learned Senior Counsel, fairly submitted that the record clearly shows that the relationship between the Appellant and his father, Ram Singh were not good. On the basis of this fair submission, we are not referring to any of the facts and documents which are produced by the parties on record to make allegations against each other in respect thereof. We are proceeding on the basis of the fact that the relationship between the Appellant and his father, Ram Singh, was not good.

3. With this factual background, the Notice of Motion was finally heard by the Learned Single Judge in the year 2024, and the Impugned Order was passed on 29th February 2024, which is under challenge in the present Appeal.

4. Mr. Setalvad, the Learned Senior Counsel appearing for the Appellant, finds fault with the Impugned Order and submits that:

i. The judgment of this Court in *Dhirendra* (supra), which was subsequently affirmed by the Division Bench on 12th November 2013 in Appeal (L) No. 386 of 2013, ought to have been followed by the Learned Single Judge because the same is based on identical facts and is binding on the Court.

ii. The Consenting Affidavit of Ram Singh dated 22nd June 2018 (*inter alia* giving consent for the grant of probate in favour of the Respondent and waiving the service of citation) would not put an end to the independent caveatable interest of the Appellant. This caveatable interest clearly subsists even today because the Testamentary Petition is pending. The proceedings of probate are in rem. The consent affidavit cannot validate the Will, which is void or suspicious. The consent affidavit of Ram Singh cannot extinguish the Appellant's independent caveatable interest. The consent affidavit of Ram Singh does not constitute evidence in the Probate proceedings.

iii. The right of the Appellant to receive a citation, being an independent right, there is no question of any estoppel on account of the consent affidavit dated 22nd June 2018 given by Ram Singh. The judgments of the Hon'ble Supreme Court in *B. L. Sreedhar v. K. M. Munireddy*, (2003) 2 SCC 355 & *Elumalai alias Venkatesan & anr. v. M. Kamala & Ors.,* 2023 SCC OnLine SC 84, as relied upon by the Learned Single Judge, are distinguishable on facts.

iv. It is an admitted position that the Appellant is the son of Ram Singh. Ram Singh is the brother of the Deceased. Accordingly, the Appellant is a legal heir falling under Class II, Entry 4 of the Schedule to the Hindu Succession Act, 1956, and has an independent caveatable interest in the estate of the Deceased. This caveatable interest is, in

law, an independent statutory right vested by virtue of the provisions of the Hindu Succession Act, and is independent of any right that the father of the Appellant may have had (or claimed, or relinquished) in the estate of the Deceased. It is a well settled position of law that any right, howsoever slight, in the estate of a deceased would qualify as a caveatable interest. The Appellant, by virtue of being a Class II heir of the Deceased, has an independent right and locus to challenge the probate proceedings and to assert his legal rights in the estate of the Deceased.

5. Mr. Sen, the Learned Counsel for the Respondent, replied to all the submissions made by Mr. Setalvad. According to Mr. Sen, the Impugned Order cannot be faulted on any of the grounds as submitted on behalf of the Appellant. He submitted that the findings of the Learned Single Judge and the reasoning assigned by the Learned Single Judge are founded on well established principles of law. Mr. Sen submitted that the reliance placed by the Appellant on the judgment of this Court, which is confirmed by the Division Bench in the Appeal, is totally misplaced. The facts and circumstances of the present case are totally different, and therefore, the judgment relied upon by the Appellant is not applicable. According to Mr. Sen, the Appellant did not have any caveatable interest at any point in time. Once the predecessor (Ram Singh) of the Appellant relinquishes the rights, then the Appellant cannot claim any rights. Additionally, Ram Singh also filed a consent affidavit in the probate proceedings and opposed the Appellant's application during his lifetime. The submissions of the Appellant that the

Appellant has independent rights in the estate of the deceased is an untenable argument because the Appellant has accepted and has throughout, proceeded on the basis that he is claiming through, and under, his father, Ram Singh. In any case, during the lifetime of Ram Singh, the Appellant, being his son, could not have claimed any rights. After the death of Ram Singh, there was nothing left of Ram Singh that the Appellant could inherit. Mr. Sen further submitted that the Court has extremely limited jurisdiction in probate proceedings. Title disputes are not within the Court's jurisdiction when deciding a probate petition. He submitted that the Appellant has converted the probate proceedings into a title dispute. Therefore, the Impugned Order cannot be faulted at all. Mr. Sen further submitted that the present case is covered by the judgments of the Hon'ble Supreme Court, on which the Learned Single Judge has relied upon, on the issue of estoppel. The Appellant is therefore estopped from contending that he has any caveatable interest.

6. We have heard Mr. Setalvad, the Learned Senior Counsel for the Appellant, and Mr. Sen, the Learned Senior Counsel for the Respondent, at length. Both of them confined their arguments to the grounds mentioned in the preceding paragraphs. We have perused the rival pleadings, the documents on record and have also considered the written submissions filed by the parties.

7. The fundamental issues that arise in the present proceedings are whether the Appellant can claim an independent caveatable interest during the lifetime of

his father or after the death of his father during the pendency of the probate petition? And would the principle of estoppel operate against the legal heir (the Appellant) if it operated against the predecessor (Ram Singh)?

8. The fundamental principle of law is that a living person has no heir. (see *Elumalai Alias Venkatesan & Anr. Vs. M. Kamala & Ors.,* (2023) 13 SCC 27, paragraph 14). When the Appellant filed the Notice of Motion, Ram Singh was alive. The Appellant was excluded as an heir by statute, viz. Sections 8 and 9 of the Hindu Succession Act. Therefore, the Appellant could not have filed the Notice of Motion seeking service of the citation. On first principles, the Appellant, the son of Ram Singh, had no right of whatsoever nature during the lifetime of Ram Singh. Therefore, the Learned Single Judge was absolutely right in holding that the Appellant had no caveatable interest when he filed the Notice of Motion.

9. To justify the filing of the Notice of Motion and pursuing it after the death of Ram Singh, the emphasis of Mr. Setalvad during his submissions, based on the grounds of Appeal are mainly focused on the judgment of this Court in *Dhirendra (supra)* and the findings of the Division Bench in the Appeal therefrom. The thrust of Mr. Setalvad's argument is that the facts of *Dhirendra (supra)* are identical to the facts of the present case. In *Dhirendra (supra)* this Court held that:

> *"8. Mr. Damle, learned counsel for defendant/caveator submits that on the death of the father of the caveator who was legal heir of the said deceased and had interest in the estate of the*

deceased, caveator will also have interest in the estate of the deceased. It is submitted that on the date of death of the father, the caveator would be entitled to make claim in the estate of the said deceased testator and accordingly would have interest in the estate of the said deceased testator. It is submitted that merely because father of the caveator did not challenge the Will, it would not affect the rights of the caveator. The caveator is entitled to claim share in the estate of the deceased independently after demise of his father. It is submitted by Mr. Damle that in affidavit in support of the caveat petitioner has though taken a plea that the property of the deceased was ancestral property, it would not mean that the other objections raised by the caveator in the affidavit in support has to be ignored. Attention of this Court is invited to paragraph No.7 of the affidavit in support of the caveat to demonstrate that the caveator has disputed execution of Will itself on the ground that the testator was blind on the date of execution of the said Will.

9. It is not in dispute that the father of the caveator was attesting witness to the Will and has filed affidavit which was annexed to the petition in which affidavit the attesting witness has deposed that he was one of the attesting witness and was present at the time of execution of the Will. He has also deposed that the deceased was of sound mind at the time of execution of the said Will. It is not in dispute that after demise of the father of the caveator, citation came to be served upon the caveator in response to which affidavit in support has been filed by the caveator claiming rights independently. It is not in dispute that the probate has not been issued by this Court and the testamentary petition filed by the petitioner has been converted into suit. 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 ceveator has caveatable interest and is entitled to challenge the said Will****."*

(emphasis supplied)

10. This judgment in *Dhirendra (supra)* was the subject matter of an Appeal before the Division Bench, and the Appeal was dismissed by the Division Bench by observing that:

> *"2.* ***If the will is set aside, the respondent's father would have been entitled to succeed to the estate of the testator as an heir and not under the will. The respondent, in turn, would then be entitled to succeed to his father's share in the estate of the deceased. The respondent, therefore, has a caveatable interest****."*
>
> *(emphasis supplied)*

11. We examined the facts of *Dhirendra (supra),* and we find that the facts are not identical. In *Dhirendra (supra)*, the attesting witness died in 2010, some 9 years after the probate proceedings had been initiated. (see para 1 of *Dhirendra (supra)*. Technically, no further citation was required to be issued, but one was issued and, given that opportunity, the party filed his caveat and opposed the proceedings. Thus, in *Dhirendra*, after the death of the father, who was the attesting witness, citations were served on the son. Therefore, it is noted in *Dhirendra* (supra) that the son of the deceased father filed a caveat after service of citation in his independent right. The fact that the citation was served is noted by the Court in its consideration in *Dhirendra (supra)*. Further, in that case, the petition had already been converted into a suit, and the proceedings were for the dismissal of the caveat which was already filed. The present proceedings are for seeking the service of a citation.

12. In *Dhirendra (supra)*, the attesting witness only filed an affidavit in the probate proceedings before his death stating that he was an attesting witness and was

present at the time of exection of the Will and that the deceased was of sound mind. In the present case, the facts are totally different because:

i. On 8th March 2018, Ram Singh affirmed an Affidavit by which he relinquished all his rights over Govind Singh's estate. Ram Singh also stated in his affidavit that he is aware of the Will of Govind Singh. The relevant statements made by Ram Singh in his Affidavit dated 8th March 2018 read as follows:

> "*2. That I have recently lost my younger brother Dr. Govind Singh Chawara S/o Laxman Singh Ji Chawara who passed away the age of 97 on 28/February/2018 in Mumbai, which has deeply saddened me.*
>
> *3. That my abovementioned brother had visited me on my birthday last year in Jaipur and had conveyed his wish to bequeath all his movable and immovable properties owned by him to My Grand Daughter in Law Hemangini Kumari W/o Dr. Prithvi Raj Singh and to their son Lakshyavardhan Singh Chawara.* ***I even singed [sic] as a witness to that will.***
>
> ***4. That the intent of the affidavit is to clearly state that I am fully aware of my brother's intent to bequeath all his properties to My Grand Daughter in Law Hemangini Kumari W/o Dr. Prithvi Raj Singh and to their son Lakshyavardhan Singh Chawara.***
>
> ***5. I hereby relinquish all my rights if any over my brother's said properties described above.***
>
> ***6.*** *That since I am nearing a 100 years of age. I am making this affidavit to ensure that the above statement made by me are recorded for posterity and to ensure that all of my abovementioned brother's properties are entered in the name of My Grand Daughter in Law Hemangini Kumari W/o Dr. Prithvi Raj Singh and to their son Lakshyavardhan Singh Chawara. Given my age I will not be able to attend any proceedings for the same and hence this affidavit to be treated as my statements of Acts, which I have made with full knowledge of the said facts without any coercion whatsoever and in a completely sound state of mind."*

(emphasis supplied)

ii. On 22nd June 2018, the attesting witnesses, Ram Singh and Kan Singh Rathore, affirmed their respective affidavits in the proceedings, confirming the execution of the Will dated 13th April 2017 by Govind Singh.

iii. On 22nd June, 2018, Ram Singh independently affirmed an Additional Affidavit, filed in the Probate proceedings, in which he consented to the Testamentary Petition and stated that the probate be granted in favour of the Respondent without service of any citation/notice upon him. The Learned Single Judge, in the impugned order at Para 16, has quoted the affidavit of Ram Singh, a portion of which reads as follows:

> "*(2) That I am also aware that the above named petitioner has filed a petition for probate before the Hon'ble High Court at Bombay in her capacity as Beneficiary / Executor named therein.*
>
> *(3)* ***I, being the brother of the above named deceased do hereby give my full and free consent in favour of the above named petitioner and pray that the probate may be granted in her favour without service of any citation / notice upon me and without any surety being justified for my share in the estate left by the deceased."***
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> *(emphasis supplied)*

iv. Thereafter, the Appellant filed an Affidavit dated 25th June 2019 in the proceedings. He made allegations against his father, Ram Singh, and stated that his father, being a hundred years old, has lost his mental capabilities, has been treated multiple times for the past few years, and has therefore not been of sound mind and in a position to comprehend or manage his day-to-day affairs etc.

v. On 25th June 2019, Ram Singh affirmed one more Affidavit in Testamentary Petition No. 2278 of 2018 to oppose Notice of Motion No.

56 of 2019 filed by his son, the Appellant. By the said affidavit, he categorically stated that he has read Notice of Motion No. 56 of 2019 filed by his son, the Appellant. He also referred to his earlier Affidavit dated 8th March 2018, by which he relinquished all his rights over his real brother Govind Singh's estate. The Statement of Ram Singh in the affidavit dated 25th June 2019, in his own words, read as follows:

> "*2. I have also got it* ***prepared and verified Affidavit on 6th March, 2018*** *before the Notary Public Shri. Dilip Kumar Joshi since that relevant time I was 99 years old and balance life I could not predict.* ***And I was concerned that after the death of my brother Dr. Govind Singh Chawara his last wish should be fulfilled.*** *I repeat, reiterate and adopt a content of the said Affidavit as a part of the present Affidavit*
>
> *3.* ***I say that sometimes in April, 2017, when my younger brother Late Dr. Govind Singh Chawara visited to Jaipur for the celebration of my birth day when he had conveyed his wish to bequeath all his properties to my grand Daughter-in-Law i.e. Smt. Hemangini Kumari Wife of Dr. Prithviraj Singh Chawara and to their son Master Lakshyavardhan Singh Chawara. The Late Dr. Govind Singh Chawara got his Will prepared as per his own wish and the same was executed and signed on 13th April 2017 in our presence viz. Shri Kamsingh Bhagwan Singh Rathod, Notary Public Shri. Dilip Kumar Joshi and myself. The said will was duly notarised before Notary Public Shri. Dilip Kumar Joshi. I say that I signed the said Will as witness along with one Shri Kan Singh Bhagwan Singh Rathod who also signed the said will is front of me. I say that when the said Will was signed and executed by my brother Late Dr. Govind Singh Chawara who was in sound state of mind and physically fit.*** *"*
>
> *4. I say that I am aware that under the Will my brother Late Dr. Govind Singh had bequeath all his movable and immovable property to my Grand Daughter-In-Law Smt. Hemangini Kumari Wife of Dr. Prithviraj Singh Chawara and to my great grandson Master Lakshvardhan Singh Chawara.* ***I say that besides me no other siblings of mine are alive.*** *I say that since several years my son Narendra Singh and his family are residing separately.*

I say that on my birthday celebration in the year 2017 my son Narendra Singh and his family were also present at the Birth day celebration and the same can be established from the photographs taken out during the birthday Celebration. I say that Narendra Singh was aware about the visit of my brother Late Dr. Govind Singh Chawara to Jaipur in April 2017.

5. I say that on coming to know about my preparing earlier affidavit in support of the Petitioner my son Narendra Singh visited at my residential address and used abusive language hence N.C. lodged on 15th January 2019. I say that second time after taking out the above Notice of Motion my son Mr. Narendra Singh had again visited me on 8th May, 2019 at the above mentioned address and threatened me that how could I give evidence that the above Will was executed and signed by the deceased in my presence. I say that under the will nominations in the estate were cancelled hence he threatened me and My grand daughter in law Smt. Hemangini kumari with dire consequences if we fail to handover half share in the property left by Late Dr. Govind Singh Chawara since he was nominees in the moveable and immoveable property. I say that he had abused me by using bad words and also attempted to hit me but he failed. I say that to avoid repetition of the scene hence the Complaint was made by me before Vaishali Nagar Police Station at Jaipur and the statement of mine was recorded on 1st June, 2019. A copy of the Complaint and statement recorded by Vaishali Nagar Police Station is enclosed herewith.

*6. **I say that I am retired Army personnel and physically fit and mentally sound, I say that on 8th May, 2019 my son Shri. Narendra Singh came and threatened and he had declared me of unsound mind. I am enclosing Dr. Certificate who had personally examined and declared me of sound mind. I am ready and personally willing to come and depose before the Hon'ble High Court if it required**."*

(emphasis supplied)

13. Therefore, we agree with the submissions of Mr. Sen, the Learned Senior Counsel for the Respondent, that the factual differences, which are material and crucial, and which are sufficient to take the present matter outside the ambit of *Dhirendra (supra)* judgment, include:

a) Ram Singh had relinquished his right;

b) Ram Singh had waived the right to citation and consented to probate;

c) Ram Singh, during his lifetime, has persistently confirmed the execution of the Will by Govind Singh and denied all the allegations of the Appellant;

d) No citation is served on the Appellant herein, while a citation was served in the *Dhirendra (supra)* case;

e) The petition had been converted to a suit already in the *Dhirendra (supra)*, while in the present case, there is an accrued right to probate.

In any case, the other arguments and grounds, including the application of the principle of estoppel, were not part of the consideration in the *Dhirendra (supra)* case at any stage. That is the major distinguishing factor in the present case, *inter alia*, because of the relinquishment of rights in the Deceased's estate by Ram Singh and the waiver of service of a citation in the proceedings. Further, Ram Singh persistently opposed the stand taken by the Appellant. Therefore, we do not agree with the submission of the Appellant that the facts of *Dhirendra (supra)* are identical to the present case.

14. The observations of the Division Bench in *Dhirendra (supra)* quoted in paragraph 10 above are after considering the facts, circumstances and peculiarity of that case. We find that the Learned Single Judge has rightly distinguished the judgment in *Dhirendra (supra),* and the same is not applicable to the facts and circumstances of the present case. It is a settled principle of law that a *ratio* of any judgment has to be applied to the facts and

circumstances of each case. The Hon'ble Supreme Court in *Oriental Insurance Co. Ltd. v. Raj Kumari & Ors.*, (2007) 12 SCC 768, has held that:

> *"11. It is true that in certain cases this Court has, after looking into the fact situation, directed the Insurance Company to make payment with liberty to recover the amount in excess of the liability from the insured. Those decisions were given on the fact situation of the cases concerned.*
>
> *12. "12.... Reliance on the decision without looking into the factual background of the case before it, is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates: (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. [(See State of Orissa v. Sudhansu Sekhar Misra) AIR 1968 SC 647] and [Union of India v. Dhanwanti Devi.) (1996) 6 SCC 44.] A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in an Act of Parliament. In [(Quinn v. Leathem) 1901 AC 495 : (1900-1903) All ER Rep 1 (HL)] the Earl of Halsbury, L.C. observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be the exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides State of Orissa v. Md. Illiyas, (2006) 1 SCC 275.*
>
> *13. "19. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are not to be read as Euclid's theorems nor as provisions of the statute [and that too taken out of their context]. These observations must be read in the context in which they appear [to have been stated]. Judgments of courts are not to be*

construed as statutes. To interpret. words, phrases and provisions of a statute, it may become necessary for Judges to embark upon lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes. In (London Graving Dock Co. Ltd. v. Horton) 1951 AC 737: (1951) 2 All ER 1 (HL) (AC at p. 761), Lord MacDermott observed (All ER p. 14 C-D)

> *'The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge,…'*

20. In Home Office v. Dorset Yacht Co. Ltd. 1970 AC 1004 : (1970) 2 WLR 1140 : (1970) 2 ALL ER 294 (HL) Lord Reid said (at All ER p. 297g),

> *'... Lord Atkin's speech statutory definition. It circumstances.' is not to be treated as if it were a will require qualification in new Circumstances.'*

Megarry, J. in Shepherd Homes Ltd. v. Sandham (No. 2) (1971) 1 WLR 1062 : (1971) 2 All ER 1267 observed : (All ER p. 1274d)

> *'One must not, of course, construe even a reserved judgment of even Russell, L.J. as if it were an Act of Parliament;'*

And, in Herrington v. British Railways Board 1972 AC 877 : (1972) 2 WLR 537 sub nom Biritish Railways Board v. Herrington, (1972) 1 All ER 749 (HL) Lord Morris said: (All ER p. 761c)

> *'There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case.'*

21. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

> *22. The following words of Hidayatullah, J. in the matter of applying precedents have become locus classicus (Abdul Kayoom v. CIT, AIR 1962 SC 680, AIR p. 688, para 19)*
>
> > *19. Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.'*
> >
> > * * *
> >
> > *'Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it Haryana Financial Corpn. v. Jagdamba Oil Mills, (2002) 3 SCC 496 at pp. 508-09, paras 19-22."*

15. Therefore, any judgment cannot be applied in an abstract way, the way the Appellant wants us to apply it. In view thereof, there is no substance in the submissions made on behalf of the Appellant on the ground of *Dhirendra's (supra)* judgment. Consequently, we reject the argument of Mr. Setalvad that the Appellant herein would potentially succeed to his father's estate and therefore his father's share in the estate of the deceased on the basis of the law laid down in *Dhirendra (supra)*.

16. Ram Singh was the sole surviving legal heir of Govind Singh. Therefore, the Learned Single Judge is right in holding that the Notice of Motion filed by the Appellant when Ram Singh was alive was itself not maintainable. Further, it is rightly held that after the consent affidavit of Ram Singh in the probate proceedings, there was nothing further remaining in the proceedings.

17. The Appellant's affidavit dated 27th January 2020, after the death of Ram Singh, alleged that after his father's death, he now has a caveatable interest. The relevant part of the Appellant's affidavit read as follows:

> *"2. I say that I am the son of Col. Ram Singh (being one of the five brothers of the deceased Dr. Govind Singh Chawara) who expired on 9th November, 2019 at Jaipur leaving behind him, myself and my brother, Mr. Birendra Singh Chawara (father-in-law of the Petitioner abovenamed) as his only heirs and legal representatives. I say that my mother, Smt. Nand Kunwar predeceased my father and expired in the year 1956. Pursuant to what is stated herein,* ***I say that since I am falling under the description of heirs specified in Class II of the Schedule to the Hindu Succession Act, 1956I, [sic] I now have caveatable interest in the matter and considering the same it is in the interest of justice that directions be given to serve the citation on me and that I may be allowed to file caveat in the matter.*** *Hereto annexed and marked EXHIBIT "1" is a photocopy of the Death Certificate of Col. Ram Singh."*
>
> (*emphasis supplied*)

18. Therefore, the Learned Single Judge in paragraph 21 of the Impugned Order has rightly held that the language of the Appellant's affidavit, filed after the death of Ram Singh, demonstrates that even according to the Appellant, when the Notice of Motion was filed on 11th February 2019, the Appellant did not have a caveatable interest. As rightly held by the Learned Single Judge, as on the date of the filing of the Notice of Motion, in view of the fact that Ram Singh relinquished his rights in the estate of Govind Singh, and by filing of consent affidavit and by waiving the service of caveat, there was no question of the grant not being issued.

19. On the basis of the judgment of *Dhirendra (supra),* as an alternate argument, Mr. Setalvad submitted that even after the death of Ram Singh, the Applicant

has a caveatable interest. As noted earlier, the facts in *Dhirendra (supra)* and the present case are entirely different. Therefore, even after the death of Ram Singh, the only surviving legal heir of Govind Singh, the Appellant could not have asserted a caveatable interest. In the present case, as on the date of filing of the Notice of Motion by the Appellant, there was accrued interest in favour of the Respondent. There was a consent affidavit of Ram Singh on record, additionally, an affidavit stating relinquishment of rights in the estate of Govind Singh, and therefore, the only thing left was the grant to be issued in the proceedings.

20. The successor can only exercise his father's right, or his inherited right to the extent his father had and nothing more. We agree with the submission of Mr. Sen, the Learned Senior Counsel for the Respondent, that the Appellant cannot, as an heir of Ram Singh, have any greater right than Ram Singh had, nor claim any properties or assets that Ram Singh never had. At the point of time that Ram Singh died, his estate had no claim in the estate of Govind Singh nor any right therein. The estate also had no right to a citation nor to file a caveat. This is the right that the Appellant inherited. Ram Singh's death could not expand his estate and/or his rights on the date of his death. So long as the relinquishment and/or waiver of citation and/or consent to issue of probate stands, the estate of Ram Singh itself had no right to demand a citation any longer and/or to file a caveat, which right Ram Singh had

surrendered/waived in his lifetime in accordance with the law. The Appellant has no claim greater than Ram Singh had at the time of his death.

21. The heirs of Ram Singh had a potential future right to succeed to Ram Singh's estate. This *spes successionis,* or contingent right, is immaterial for determining the caveatable interest of the Appellant.

22. Mr. Sen, the Learned Senior Counsel for the Respondent, aptly relied upon the judgment of the Hon'ble Supreme Court in the matter of *Krishna Kumar Birla vs Rajendra Singh Lodha*, (2008) 4 SCC 300 (*Birla v Lodha*), in which it is held that:

> *"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 determining the issue in a case of this nature.***
>
> *90. Two sisters of MPB being alive (one of them is since deceased), indisputably in the event the application for grant of probate of RSL in respect of the 1999 Will is refused they will have an interest in the estate of the testatrix. The right of the said sisters of MPB being definite and clear, it is not a case where it is necessary to apply the bare possibility or the common ancestor test."*
>
> ….
>
> *"94. A Will is executed when the owner of a property forms an opinion that his/ her estate should not devolve upon the existing heirs according to the law governing intestate succession.* ***When, thus, a person who would have otherwise succeeded to the estate of the testator, would ordinarily have a caveatable interest, any other person must ordinarily show a special interest in the estate."***
>
> *"95. Such a special interest may be a creditor of the deceased as was the case in Sarala Sundari Dassya v. Dinabandhu Roy Brajaraf Saha (Firm) [AIR 1944 PC 11]. "But, in our opinion, the same would not mean that even if the estate of the deceased is being represented by the legal heirs, caveat can be entertained at the instance of a person who has*

> *no real interest therein or in other words would merely have a contingent interest."*
> …
> "*106. The decisions which were rendered prior to coming into force of the Hindu Succession Act, thus, may not be of much relevance. Now, if on the interpretation of law, as it then stood, a reversioner or a distant relative who could have succeeded to the interest of the testator was entitled to file a caveat, they would not be now, as the law of inheritance and succession is governed by a Parliamentary Act."*
>
> *(emphasis supplied)*

23. In fact, in *Birla v Lodha* the Supreme Court expressly overruled a decision of the Calcutta High Court where a caveat was upheld on the basis that the caveators could have succeeded to the interest of a testator, the same argument that Mr Setalvad has advanced. The Hon'ble Suprrerme Court has held that:

> ***"99**. Reliance was placed by Mr. Venugopal on an unreported decision of the Calcutta High Court in the case of Goods of Santi Bhusan Bose,* ***Application No. 85 of 1991 where caveat was not discharged on the premise that the caveator would succeed in the event of death of the heirs of the deceased. Apart from that fact, the said decision, in our opinion, did not lay down the correct law, even the principles enunciated will have no application in this case as the heirs of Smt. Laxmi Devi Newar and Smt. Radha Devi Mohatta would succeed to their interest in the property and not the appellants, as classified heirs succeed absolutely and upon death of any such heir, the estate devolves upon the heirs of such absolute successor. There could not, therefore, be any question of reversion of the property****.*
>
> *(emphasis supplied)*

24. In *Birla v Lodha*, M. P. Birla (MPB) and Priyamvada Devi Birla (PDB) had made mutual Wills and PDB had inherited thereunder. PDB had thereafter made her own Will in favour of Lodha which took effect in respect of her

own properties but not in respect of properties inherited under the mutual Will. MPB's sisters were issued citations as admitted heirs but diverse other Birlas had filed caveats on various grounds including claiming through the sisters as well as reversionary rights (of property inherited by a widow).

The Hon'ble Supreme Court further held:

> "137. *Agnate or cognates are, thus, recognized as heirs. They may be the erstwhile members of a nuclear family. So far as heirs and legal representatives of the family are concerned, the Hindu Succession Act clearly lays down five classes of heirs: Sisters of husband belong to Class II heir. They succeeded to the interest of MPB in 2004 on the death of PDB. The Appellants accepted the said fact but contended that as the life of the said heirs was uncertain they, thus, have a caveatable interest. It has been accepted that there would be no difficulty in ascertaining the successors of PDB. It is an indisputable case of intestacy having regard to Section 15 of the Hindu Succession Act.*
>
> *138. It was contended that having regard to the testate succession created by reason of the Will and the matter remaining pending for last three years, the claim of the appellants and family members is required to be decided on the happening of certain contingencies in the intervening period between the death of PDB and the ultimate decision of the probate application, as one of the heirs of PDB has died.*
>
> *139. The submission, to say the least, is fallacious. The heirs of the deceased have already been impleaded as parties.* ***Inheritance to an estate never remains in abeyance.*** *In the event of death of the sisters of MPB, their heirs and legal representatives would inherit the property in their own right and not as the heirs of MPB.* ***The dispute regarding intestacy does not change the law of succession and inheritance.***
>
> *140. As Agnates KKB, BKB, YB and GPB also claimed caveatable interest as agnates.* ***Entry 2 of Class II of the Schedule appended to the Hindu Succession Act in this case would not bring them into the picture, as agnates will acquire an interest only when there is no heir of either Class I or Class II. When there exists Class II heirs, the appellants would not have any real interest in the property.*** *The property upon the death of Smt.*

> *Laxmi Devi Newar and Smt. Radha Devi Mohatta would pass on to their legal heirs. The Appellants being not the heirs of MPB or PDB have no caveatable interest."*
>
> *(emphasis supplied)*

25. After analysing the provisions of law and earlier precedents, the Hon'ble Supreme Court in *Birla v Lodha* has held that it is too far-fetched a submission that a person having a remote family connection or as an agnate is entitled to file a caveat. A reversioner, an agnate, or a family member can maintain a caveat only when there is a possibility of their inheritance if the property in the event the probate of the Will is not granted. If there are heirs intestate who are alive, entertaining a caveat on the part of another family member, a reversioner, an agnate, or a cognate would never arise.

26. Ram Singh was the sole surviving legal heir of Govind Singh. It is clear that a person who would otherwise naturally succeed on the death of a person has a caveatable interest and no other person unless such person has a *special interest.* Therefore, no contingent interest is to be considered, and no special interest has been pleaded or argued in the present case.

27. Further, shares and/or devolution of an estate freezes as of the death of a person. Upon the death of an heir, such heir is not 'removed' or erased and supplanted by fresh heirs, but only that the heirs of the deceased heir represent the deceased heir's claim, if any made. At paragraph 137 of the *Birla v Lodha* judgement quoted above, the Court notes precisely this:

> "139. *The submission, to say the least, is fallacious. The heirs of the deceased have already been impleaded as parties.* ***Inheritance to an estate never remains in abeyance.***"*(emphasis supplied)*

28. Therefore, we reject the submission made on behalf of the Appellant that by virtue of being a Class II heir of the Deceased, the Appellant has an independent right and locus to challenge the probate proceedings and to assert his legal rights in the estate of the Deceased.

29. Pertinently, Ram Singh also left a Will dated 1st January 2019, but disinherited the Appellant. The Appellant has challenged this Will in Jaipur. Ram Singh excluded all other persons from being or claiming to be next of kin or heirs. This is an additional factor which goes against the Appellant and is contrary to the line of argument advanced by Mr. Setalvad.

30. The Learned Single Judge in the Impugned Order has employed the principles of estoppel by following the law laid down by the Hon'ble Supreme Court in *Elumalai alias Venkatesan & Anr. v. M. Kamala & Ors.*, 2023 SCC OnLine SC 84 & *B. L. Sreedhar & Ors. v K. M. Munirediddy (Dead) & Ors.* (2003) 2 SCC 355. Mr. Setalvad, on behalf of the Appellant, submitted that the consenting affidavit of Ram Singh dated 22nd June 2018 (*inter alia* giving consent for the grant of probate in favour of the Respondent) would not put an end to the independent caveatable interest of the Appellant. He submitted that the Appellant's right to receive a citation, being an independent right, there is no question of any estoppel on account of the consent affidavit dated 22nd June 2018 given by Ram Singh. Mr. Setalvad, submitted that the

judgment of the Hon'ble Supreme Court in *Elumalai alias Venkatesan & Anr. v. M. Kamala & Ors.*, 2023 SCC OnLine SC 84, followed by the Learned Single Judge, is clearly distinguishable since the relinquishment in that case by the predecessor of the person claiming a caveatable interest was made for valuable consideration received.

31. In the matter of *Elumalai Alias Venkatesan & Anr. Vs. M. Kamala & Ors.,* (2023) 13 SCC 27, it has been held:

> *"7, Sir Roland Wilson, in his "Anglo Mohamadan Law" (p. 260, para 208) states the position thus:*
>
> *'For the sake of those readers who are familiar with the joint ownership of father and son according to the most widely prevalent school of Hindu Law, it is perhaps desirable to state explicitly that in Mohammedan, as in Roman English Law, nemo est heres viventis …… **a living person has no heir**. An heir apparent or presumptive has no such reversionary interest as would enable him to object to any sale or gift made by the owner in possession; See Abdul Wahid which was followed in Hasan Ali. The converse is also true: a renunciation by an expectant heir in the lifetime of his ancestor is not valid, or enforceable against him after the vesting of the inheritance.'*
>
> *(emphasis supplied)*
>
> *This is a correct statement, so far as it goes, of the law, because a bare renunciation of expectation to inherit cannot bind the expectant heir's conduct in future. "**But, if the expectant heir goes further and receives consideration and so conduct himself as to mislead an owner into not making dispositions of his property inter vivos the expectant heir could be debarred from setting up his right when it does unquestionable vest in him. In other words, the principle of estoppel remains untouched by this statement."***
>
> *(emphasis supplied)*

32. In *B. L. Sreedhar v K. M. Munireddy*, (2003) 2 SCC 355, the Hon'ble Supreme Court has explained the principle of estoppel after considering various authorities and held that:

> *"15. On the whole, an estoppel seems to be when, in consequences of some previous act or statement to which he is either party or privy, a person is precluded from showing the existence of a particular state of facts. Estoppel is based on the maxim allegans contraria non est audiendus (a party is not to be heard to allege the contrary) and is that species of presumption juries et de jure (absolute irrebuttable presumption), where the fact presumed is taken to be true, not as against all the world, but against a particular party, and that only by reason of some act done, it is in truth a kind of argumentum ad hominem."*

33. Mr. Setalwad did not dispute the position in law on the principle of estoppel. However, while bringing out the distinguishing factors in the above Supreme Court judgment *Elumalai alias Venkatesan & Anr. v. M. Kamala & Ors.*, 2023 SCC OnLine SC 84, Mr. Setalvad misses the fact that Ram Singh has not only filed a consent affidavit in the proceedings, but has also sworn an affidavit relinquishing his right to the deceased's estate. Also, when the Appellant claimed a right of service of citation, he opposed the application by filing his affidavit in the proceedings and confirming his relinquishment. A successor of Ram Singh, the Appellant is bound by the acts of his predecessor in title and bound thereby and/or estopped from claiming to the contrary.

34. Thus, it is trite that the act of the father would *ipso facto* estopp the son from claiming a right higher and on a different footing from his father under the law of succession. The rights in the estate can be relinquished without any consideration, particularly when it is a family matter. It is wrong to say that

the principle of estoppel would not apply only because there is no consideration paid to Ram Singh or accepted by Ram Singh for the relinquishment of his rights. The relinquishment of rights by Ram Singh will also have to be appreciated in view of the fact that Ram Singh is the attesting witness to the Will of Govind Singh and has waived the service of a citation by filing a consent affidavit in the proceedings. The principle of estoppel would certainly have operated against Ram Singh. Therefore, we agree with the findings and reasoning of the Learned Single Judge in the Impugned Order that estoppel would also operate even against the Appellant and reject the submissions of Mr. Setalvad.

35. The Appellant has stalled the proceedings of the probate petition since the year 2018 under the wrong pretext that he had a caveatable interest, when none existed at the time he filed the Notice of Motion. The Appellant continued to stall the proceedings on the basis of *Dhirendra (supra)* by wrongly stating that the facts of the present case are identical to those of *Dhirendra (supra)*. The Appellant has clearly abused the process of law.

36. For the reasons stated aforesaid, the present Appeal is liable to be dismissed, and accordingly it is dismissed.

37. The interim relief granted in the present Appeal on 25th April 2024 stands vacated.

38. We are of the opinion that looking at the conduct of the Appellant we would have been fully justified in imposing costs on the Appellants. However, due to the pursuasive skills of Mr. Setalvad, we have refrained from doing so. Accordingly, there shall be no order as to cost.

39. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[AMIT S. JAMSANDEKAR, J.] ***[B. P. COLABAWALLA, J.]***

40. After pronouncing the Judgment, learned Counsel appearing for the Appellant seeks extension of interim relief granted on 25.04.2024.

41. Learned Counsel appearing for the Respondent has opposed the said request of the Appellant.

42. Considering the fact that the interim relief granted on 25.04.2024 has continued till date, we are inclined to extend the same for a period of four weeks from the date of uploading of this Order.

[AMIT S. JAMSANDEKAR, J.] ***[B. P. COLABAWALLA, J.]***