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

INTERIM APPLICATION NO. 1808 OF 2024

IN

CAVEAT (L) NO. 9320 OF 2024

IN

TESTAMENTARY PETITION NO. 3908 OF 2023

Hoshang Jehangir Khan and Ors. .. Applicants

IN THE MATTER OF

Hilla Homi Dady alias Hilla Homi Dadysett alias

Hila Dady alias Hilla Dadysett .. Deceased

Hoshang Jehangir Khan and Ors. .. Petitioners

Versus

Khushroo Behramshaw Mogal

Caveator /

.. Proposed Defendant

.....

- Mr. Dinyar Madon, Senior Advocate a/w. Ms. Ferzana Behramkamdin, Ms. Kalyani Deshmukh, Ms. Sanskruti Hebalkar, Advocates i/by FZB & Associates for Applicants and Mr. Vijay Payal, Advocate i/by Sameer R Logade, Advocates for Petitioners.
- Mr. Bhavesh Parmar a/w. Mr. Devmani Shukla, Mr. Rajesh Sahani and Mr. Mohd. Riyaz, Advocates i/by G.L. Ghonge for Caveator.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 05, 2026.

JUDGMENT:

1. Heard Mr. Madon, learned Senior Advocate for Applicants / Petitioners and Mr. Parmar, learned Advocate for Caveator.

2. This Interim Application is filed for seeking dismissal of Caveat and Affidavit-in-support thereof filed by Caveator Mr. Khushroo Behramshaw Mogal in Testamentary Petition No.3908 of 2023. Petition is filed by Applicants in their capacity as Executor and Executrix named in the Last Will and Testament dated 18.12.2015

alongwith the 4 Codicils (collectively hereinafter referred to as ‘**the Will**’) of the deceased namely Hilla Homi Dady alias Hilla Homi Dadysett alias Hila Dady alias Hilla Dadysett alias H.H. Dady alias H.H. Dadysett alias Hilla H. Dady alias Hila H. Dadysett (for short ‘**the deceased**’). Testamentary Petition No.3908 of 2023 is filed on 17.10.2023 and is pending before this Court, *inter alia*, seeking Probate of the Will of the deceased. Applicant No.1’s father and deceased’s husband were cousins (maternal grandmother and grandfather respectively were brother and sister).

3. Applicant No.1 has known deceased since the last 50 years. It is averred in the Application that only surviving legal heir of the deceased (deceased brother’s son) requested the Applicants for copies of the Will and Codicils of the deceased which were handed over by Applicants to the said surviving legal heir on 24.07.2023. The said legal heir of the deceased requested Applicants to make payment of his bequest and by Affidavit dated 26.07.2023 consented to grant of probate in favour of Applicants. Citation was issued vide order dated 19.12.2023 and published on 21.01.2024 in accordance with law. Affidavit of service of general citation was filed on 06.02.2024.

4. According to Applicants on 14.03.2024, Mr. Khushroo Behramshaw Mogal (Caveator) filed Caveat alongwith Affidavit-in-support thereof dated 12.03.2024 in the Testamentary Petition alongwith alleged Last Will and Testament dated 23.03.2023 allegedly

executed by deceased. Copy of the said alleged Will is appended at Exhibit 'B' to the Affidavit-in-support of the Caveat. Thereafter on 26.03.2024, Advocates for Caveator served a copy of the Caveat and Affidavit-in-support thereof on the Applicants' Advocates.

5. Applicants have filed the present Interim Application seeking dismissal of the Caveat on 15.05.2024 on the following grounds:-

- (i) That the Caveator is claiming to be sole beneficiary of only a part of the estate of the deceased on the basis a fabricated and forged Will appended at Exhibit 'B' to the Affidavit-in-support of the Caveat;
- (ii) That the signature on the alleged Will dated 23.03.2023 is not that of the deceased;
- (iii) That Caveator has no caveatable interest, neither he is a legal heir nor a relative of the deceased let alone an heir as per the provisions of the Indian Succession Act, 1925 as applicable to Parsis since the deceased was a Parsi;
- (iv) That in view of the relationship of Applicants with the deceased and her predeceased husband, Applicants are / were not aware about or knew who the Caveator or his father 'Behramshaw Rustomji Mogal' was and whether they were known to the deceased since it is claimed by the Caveator that the deceased allegedly mentioned the Caveator to be 'just like my son' or 'my nearest person'

in the alleged Will;

- (v) That there is no reason and explanation as to why the Caveator approached his Advocate after almost one year of the death of the deceased if he claimed interest under the Will of the deceased in respect of a valuable property allegedly bequeathed to him;
- (vi) That the Last Will and Testament of the deceased and the 4 Codicils made by the deceased do not even remotely mention the name of the Caveator or his father either as beneficiary or nominee much less as persons close to the deceased in respect of any of the several assets of the deceased much less the Bungalow which is claimed to be allegedly bequeathed to the Caveator under the Will propounded by him;
- (vii) That the Caveator has not specified how he is known to the deceased as her nearest person so as to make him the sole beneficiary of only a part of the estate of the deceased;
- (viii) That there is no mention of the Will and the 4 Codicils made by the deceased in the alleged Will propounded by the Caveator;
- (ix) That the deceased had made her intention very clear right from the year 2015 for a period of more than 8

years prior to the alleged Will propounded by the Caveator about her share in the Bungalow property which she desired to be sold and proceeds thereof were to be used towards charity as per her Will and there was no reason for the deceased to change her mind within a period of 24 days from 27.02.2023 (date of last Codicil) to the date of the alleged Will dated 23.03.2023 propounded by the Caveator and decide to give her share in the Bungalow to the Caveator who is a totally unknown and unrelated person to the deceased;

- (x) That despite the Caveator propounding the Will dated 23.03.2023, he did not file any Petition for Probate or Letters of Administration with Will annexed until such objection was raised by the Applicants for a period of over one year; and
- (xi) That the conduct of the Caveator and his credentials are such that the alleged Will propounded by the Caveator was never in existence on the date of the death of the deceased and has been subsequently prepared by the Caveator in conspiracy with others with a clear view to usurp the estate of the deceased and in that attempt blackmail and extort monies from Applicants to settle the matter with Caveator, who has no rights of any

nature whatsoever in the property and credits of the deceased.

6. Mr. Madon, learned Senior Advocate appearing on behalf of Applicants would at the outset submit that on making enquiries with the the Parsi community about the Caveator's credentials, it has been learnt that the Caveator has filed Suit No.1905 of 2006 against this own family members wherein the Caveator's own mother has filed written statement stating that the Caveator is a mischievous person and has always tried to extort money by blackmailing persons and deriving benefit for himself.

6.1. He would submit that in the same proceedings the Caveator's stepfather and brother have also filed written statement and have set out therein about the Caveator's several illegal and criminal acts and criminal complaints filed against the Caveator in various police stations. He would submit that averments in those pleadings by the family members of the Caveator *prima facie* show that the Caveator has filed proceedings to blackmail and extort monies from the Caveator's stepfather and Caveator's own mother and he has also duped his wife by selling her father's house and usurping the amounts from his pension account and has made a false and forged Will and documents, due to which civil and criminal proceedings have been filed against the Caveator by his brother-in-law in the Metropolitan Magistrate Court at Girgaon and the Bombay City Civil Court which are

pending.

6.2. He would submit that on perusal of the alleged Will propounded by the Caveator it is *prima facie* seen that the signature made on the said Will is not that of the deceased as on mere comparison with the naked eye the signatures of the deceased as appearing on the Will and Codicils propounded by the Applicants are completely different. He would submit that neither the Applicants nor any person associated with the deceased are aware about the fact that the Caveator was known to the deceased at any point of time during her lifetime or that he was her nearest person or deceased treated him just like her son as claimed by the Caveator. He would submit that this is based on the fact that Applicants shared a very close personal relationship with the deceased since they been related to her and most importantly name of Applicant No.2 was added by the deceased to her bank account as joint holder and the deceased had nominated Applicant No.1 as nominee in respect of all her investments and assets and if this is the fact, then the alleged claim of the Caveator that he was “just like her son” to the deceased would have been known to the Applicants.

6.3. He would submit that neither the Applicants nor any other person close to the deceased had ever heard or known or even seen the Caveator during the lifetime of the deceased. He would submit that

deceased has bequeathed to her nephew Mr. Yezdi only a sum of money and therefore there would be no reason whatsoever for her to give the Caveator who is a completely unknown stranger and unrelated person, her share in the Bungalow which she has bequeathed to charity under her Will and Codicils propounded by Applicants.

6.4. He would submit that if the names of the witnesses to the Wills and Codicils propounded by Applicants are perused by the Court, it would be evident that those witnesses were all known to the deceased whereas the witnesses to the alleged Will propounded by the Caveator are totally unknown persons and most importantly those witnesses have signed on a separate page altogether appended to the alleged Will which *prima facie* raise suspicion that the alleged Will is forged and fabricated.

6.5. He would submit that in order to overcome the reason for not filing any Petition for probate, it is only after the Applicants pointed out the same in their Interim Application that the Caveator has filed his Testamentary Petition to propound the alleged Will in this Court. He would submit that from reading of the alleged Will, it is *prima facie* clear that the alleged Will did not exist on the date of death of the deceased and the Caveator has somehow unlawfully and surreptitiously procured the copy of the Will and 4 Codicils propounded by Applicants and has forged and fabricated the alleged

Will and filed his Caveat with a view to blackmail and extort monies from the Applicants. He would submit that a clear attempt is made by Caveator to usurp a valuable property of the deceased which the deceased has otherwise through her Will and 4 Codicils bequeathed to charity to the exclusion of her only surviving legal heir and the act of the Caveator is with clear *malafide* and ulterior motives. He would submit that if at all the deceased had prepared the alleged Will, the *bonafides* of the Caveator would have been proved if, he had approached the Court immediately or within a reasonable time for seeking probate of the alleged Will after the demise of the deceased, but it is only after the Applicants filed the Testamentary Petition seeking probate of the Last Will and Testament and 4 Codicils of the deceased and when the said proceedings were pending in this Court and after citation was issued, the Caveator has somehow got hold of the papers and has prepared the alleged Will in conspiracy with other people to claim an illegal benefit out of the property of the deceased.

6.6. He would submit that the most intriguing fact is that the alleged Will bequeaths only the share of the deceased in the Bungalow to the Caveator, on the premise that he was just like her son and the nearest person to the deceased while leaving out several other properties and credits belonging to the estate of the deceased.

6.7. After taking me through the proceedings and the Last Will and Testament of the deceased alongwith the 4 Codicils and comparing the same with the alleged Will propounded by the Caveator, on the basis of the aforesaid reasons it is urged that the Caveat (L) No.9320 of 2024 and the Affidavit-in-support dated 12.03.2024 filed by the Caveator be dismissed and Interim Application No.1808 of 2024 be allowed with costs.

6.8. Additionally in support of his above submissions, Mr. Madon, has placed on record the decision of this Court passed in Interim Application No.1809 of 2024 in the present Testamentary Petition. This Application was filed by Applicants under Section 340 read with Section 195 of the Criminal Procedure Code, 1973 (for short '**Cr.PC**') seeking criminal enquiry against the Caveator. He would submit that the said Interim Application has been allowed and by virtue of the aforesaid order the Prothonotary and Senior Master through his representative has been directed by this Court to take appropriate steps and file complaint against the Caveator before the jurisdictional Magistrate in respect of the offenses punishable under Bharatiya Nyaya Sanhita, 2023 and Indian Penal Code, 1860 including under Sections 196, 199, 200, 463 and 471 of the Indian Penal Code for preparation and use of the alleged Will propounded by the Caveator.

7. **PER CONTRA**, Mr. Parmar, learned Advocate appearing on behalf of the Caveator has at the outset drawn my attention to averments made in the twin Affidavits filed by the Caveator dated 26.04.2024 which is the Affidavit-in-support of Caveat dated 12.03.2024 and additional Affidavit-in-Reply dated 08.12.2025. He has also referred to and relied upon the order dated 14.10.2025 passed by the Additional Registrar (O.S.)/Additional Prothonotary and Senior Master in the Third Party Application (L) No.24410 of 2025 filed by the Caveator seeking issuance of certified copy of the entire proceedings of the present Testamentary Petition having been rejected by the learned Officer in view of the order dated 14.10.2025 passed in Interim Application No.1809 of 2024.

7.1. Mr. Parmar would contend that the Affidavit-in-Reply has been filed without the Caveator having the benefit of doubt of perusing the Will and the 4 Codicils of the deceased propounded by the Applicants. However since this grievance was made before me and since the Applicants have referred to and relied upon the Will and the 4 Codicils in support of their submissions on the suggestion made by the Court, Mr. Madon has in his usual fairness handed over copies of the Last Will and Testament alongwith 4 Codicils to Mr. Parmar on the previous date of hearing so that it would enable the Caveator to meet the case of the Applicants.

7.2. He would submit that the Will and all 4 Codicils relied upon by Applicants have been prepared by the same Solicitor's office namely Maneksha and Sethna which is *prima faice* seen from the dockets appended thereto. He would submit that the full signature of the deceased on the Will and 4 Codicils if juxtaposed and compared would *prima facie* differ from each other in all the 4 documents. He would submit that even the initials of the deceased made on the said documents *prima facie* differ. He would submit that perusal of the Will and 4 Codicils show that each and every page of the said documents have not been initialed by the deceased as only alternate pages are initialed and therefore doubt is created with respect to the genuinity of the same. He would submit that on the last page of the Will dated 18.12.2015 the initials of the deceased are made from a different ink of a pen whereas a full signature of the deceased is from a different ink of a pen even though both the inks are of blue colour.

7.3. He would submit that the Caveator expresses grave doubt and suspicion on the tenability of the Last Will and Testament and the 4 Codicils propounded by Applicants on the ground that those documents were dealing with substantial immovable and movable properties running into hundreds of crore belonging to the deceased. He would submit that when the last Will dated 18.12.2015 was made by the deceased, she was 92 years old and thereafter until 2023 for a period of 8 years until she turned 100 years old, 4 Codicils were

prepared by her from time to time. He would submit that Applicant No.2 who has been named as one of the Executor and Trustee is an Advocate and Solicitor of a renowned law firm in Mumbai and she is also a beneficiary under the Will of the deceased. He would submit that the bequest made to Applicant No.2 is substantial not only in terms of money but also ornaments, artefacts as also the fact that she is a nominee of all bank accounts, shares, mutual funds etc. alongwith Applicant No.1 and has been named as a Trustee of the Trust established on 29.01.2016 by the deceased. He would submit that the closeness of the Applicants with the deceased even prior to she making the Will or before her demise will have to be gone into by the Court as there is no disclosure forthcoming from the Applicants in that regard. He would submit that Applicant No.1 who is named as one of the Executor and Trustee is also a beneficiary under the Will of the deceased in respect of not only substantial amounts, but immovable property running into crores of rupees as also movables properties. He would submit that there is no explanation or reason forthcoming from the deceased in any of the documents namely her Last Will and Testament and the 4 Codicils propounded by Applicants as to why no member of her family was made the Executor or Trustee or beneficiary thereunder. He would submit that relationship and nexus with Applicant No.1 has been shown differently in the Will and third Codicil wherein Applicant No.1 is referred to him as the relative of her

deceased husband in the Will dated 18.12.2015, but no explanation is given about the said relation. Further he would submit that Applicant No.1 is also referred to as a friend at a different place in the Will dated 18.12.2015, but curiously he is referred to as nephew of the Testatrix's deceased husband in the 3rd Codicil dated 18.09.2019. He would submit that if the names of the witnesses who have appended their signatures on the Will and 4 Codicils is seen, save and except their name, no other details regarding their address, identification or mobile number has been stated. He would submit that the names of the witnesses appearing on the Will and 4 Codicils are different and made at different points of time, thus arousing grave suspicion about the authenticity of the Will and 4 Codicils having been prepared by Applicants as being suspicious and doubtful.

7.4. He would vehemently submit that the aforesaid suspicion clearly arises in view of the advanced age of the deceased / Testatrix when she made the Will dated 18.12.2015 and the 4 Codicils thereafter upto 2023 between the age of 92 – 100. He would submit that even though the Caveator has filed Testamentary Petition No.3160 of 2024, Applicants have not filed their Caveat in the said Petition and this conduct of Applicants needs to be noted by the Court. He would submit that the order dated 14.10.2025 passed by this Court in Interim Application No.1809 of 2024 filed by Applicants seeking relief under Section 340 of the CrPC records that as per settled law the Caveator

does not have a right of audience and hearing and therefore the observations and findings which are sought to be referred to and relied upon against the Caveator on the basis of the pleadings and contentions made by Applicants therein cannot be held against the Caveator in the present proceedings to dismiss the Caveat of the Caveator.

7.5. He would submit that the Caveat has been filed on the basis of the Will of the deceased dated 23.03.2023 and the same will have to be decided and taken to its logical conclusion in trial if it is to be objected upon by Applicants. He would submit that the findings returned in the order dated 14.10.2025 cannot be held against the Caveator for dismissing the Caveat since the allegations made therein are yet to be investigated and tried before the concerned appropriate Trial Court in accordance with law. He would submit that unless and until the alleged wrong and illegalities are investigated and tried and concluded in accordance with law, Caveator cannot be held guilty and cannot be deprived of the benefit of the basic rule of law of having been held guilty without trial. He would submit that dismissing the Caveat at this stage would infact amount to holding the Caveator guilty without the same having been tried by the appropriate Court as directed vide order dated 14.10.2025. He would submit that under Chapter 21 of the Rules of the High Court of Judicature at Bombay, there is no provision in law which provides setting aside of the Caveat

and as per Rule 403 upon the Caveat and the Affidavit-in-support having been lodged, the Testamentary Petition No.3908 of 2023 has to be automatically converted into a Suit proceeding and tried in accordance with law at trial. He would submit that it is only in the Testamentary Suit proceedings that the Caveator will get an opportunity to lead evidence and prove his case to the contrary from what is alleged by Applicants. He would submit that if the Caveat is dismissed, it would amount to denying and depriving a valuable right of contest to the Caveator on merits in Testamentary Petition No.3908 of 2023.

7.6. He would submit that ideally Testamentary Petition No.3908 of 2023 filed by the Applicants and Testamentary Petition No.3160 of 2024 filed by the Caveator are required to be heard and tried together since both the Petitioners are propounding separate Wills prepared by the deceased. He would submit that since the Caveator has filed his Caveat and questioned the authenticity and ingenuity of the Will and the 4 Codicils propounded by Applicant and has also propounded the Will prepared by the deceased in his favour, the right course of action would be to try both the proceedings together at trial by converting them into Testamentary Suits in accordance with law. He would therefore submit that Interim Application No.1808 of 2024 be dismissed on the aforesaid grounds.

8. I have heard Mr. Madon, learned Senior Advocate for Applicants/Petitioners and Mr. Parmar, learned Advocate for Caveator and with their able assistance perused the entire record of the case. Submissions made by both the Advocates at the bar have received due consideration of the Court.

9. At the outset, the preliminary objection taken by Mr. Parmar that in view of Caveat filed by the Caveator, the Testamentary Petition has to be automatically converted into a Testamentary Suit proceedings and parties have to be given an opportunity to lead evidence in respect of their claim needs to be dispensed with. It is argued by the Caveator that there is no provision in Chapter XXVI pertaining to Testamentary and Intestate Jurisdiction in the Bombay High Court Original Side Rules 1980 for dismissal of Caveat at the threshold and therefore the Interim Application filed by Applicants / Petitioners deserves to be dismissed in limine. This submission of the Caveator is unacceptable and not tenable in law. If such a submission is countenanced about all Testamentary Petitions to be converted into a Suit proceeding upon filing of Caveat and the Affidavit-in-support thereof, it would lead to disastrous consequences. It will open the floodgates for opposing the Will of the deceased on filing the Caveat by any person and on any ground whatsoever. Mr. Parmar has vehemently relied on Rule 403 in support of his aforesaid submission but the same rule refers to the procedure applicable to Civil Suits on

the Original Side of the Bombay High Court. That apart Rule 436 pertains to practice and the procedure provided by the aforesaid Chapter XXVI and states that in the cases not provided in the aforesaid Chapter or by the Rules or procedure laid down in the Indian Succession Act 1925 or by the Civil Procedure Code, 1908, the Judge may follow the practice and procedure of the Probate Division of the High Court of Justice in England so far as they are applicable and not inconsistent with the Rules in Chapter XXVI, Indian Succession Act 1925 and the Civil Procedure Code, 1908.

10. It is in this view of the matter that the Interim Application filed for dismissal of the Caveat cannot be dismissed at the threshold. It will have to be considered on its own merits and strengths according to the procedure applicable to Civil Suits on the Original Side of this Court under the inherent powers of the Court to prevent misuse of the due process of law.

11. With the able assistance of Mr. Madon and Mr Parmar, I have perused the record of the case. After juxtaposing the copy of Will dated 18.12.2015 together with the 4 Codicils and copy of the alleged Will dated 23.03.2023, I must say that the case of the Caveator does not inspire the confidence of the Court from more than one reason as underlined hereunder.

12. It is seen that Applicant / Petitioners have had a very close relationship with the deceased rather they are related to the predeceased husband of the deceased. It is further seen that the relationship of Applicants has been translated into a fiduciary relationship over the years because the Applicant No. 2 was added by the deceased as a joint holder in her bank accounts and Applicant No. 1 was made as nominee in respect of all investments / assets / shares by the deceased during her lifetime. When such was the relationship of the Applicants with the deceased then the word of the Applicants would *prima facie* carry weight when they would say that during the lifetime of the deceased and their close association with the deceased neither the Caveator nor his father Behramshaw Rustomjee Mogal were known, were heard about or ever seen with the deceased much less the Caveator having been considered just like son of the deceased or nearest person to the deceased. In the alleged Will propounded by the Caveator the two phrases used therein by the deceased qua the Caveator are “just like my son” and “my nearest person”. It is on the basis of these two phrases Caveator claims that the deceased prepared her Will dated 23.03.2023 and bequeathed one immovable property out of her entire estate to him.

13. It is shocking that after the deceased expired on 22.05.2023 the Caveator filed his Caveat on 14.03.2024 after a period of 9 months and 22 days without offering any explanation whatsoever for the

delay. Though the delay may not be fatal to filing of Caveat generally but it would be dependent on the facts and circumstances of each case and the facts in the present case are extremely gross on the face of record. Admittedly, the Caveator has not caveatable interest in the property or credits of the deceased neither he is a legal heir nor a relative or was in any manner whatsoever associated with the deceased. This fact is *prima facie* evident from the alleged Will propounded by the Caveator himself. Neither there is any explanation offered in the Affidavit-in-support of the Caveat. This fact gets further fortified on reading of the Will dated 18.05.2015 and there 4 Codicils thereafter executed by the deceased between 18.12.2015 and 27.02.2023. If indeed the alleged Will propounded by the Caveator was prepared on 23.03.2023 then there was no reason for the Caveator to wait for the aforesaid period of 9 months and 22 days for approaching the Court for seeking the Probate or Letters of Administration with Will annexed. It is seen that it is only when Applicants / Petitioners raised this objection after filing of the Caveat, the Caveator realized that he ought to have filed his Testamentary Petition which he filed thereafter. Neither is there any reason or explanation given by the Caveator as to why he waited for almost 1 year after the demise of the deceased if a valuable property rather valuable immovable property had been bequeathed to him under the alleged Will. The case of Caveator is completely silent as to how he

knew the deceased because apart from the alleged Will propounded by him there is no other *prima facie* evidence of his acquaintance with the deceased. Further if the Will dated 18.12.20215 and the 4 Codicils are perused, the intention of the deceased therein is consistent about sale of her share in the bungalow and to donate the proceeds thereof to charity which she conceptualized in 2025 itself. It is seen that the Will dated 18.12.2015 and the 4 Codicils are clearly consistent and executed in the presence of known, trusted witnesses as opposed to the 2 witnesses in the alleged Will propounded the Caveator who are completely unknown strangers. The most intriguing part is that these two unknown witnesses have appended their signature as witnesses on a separate page altogether which appears to have been annexed to the alleged Will propounded by the Caveator, thus further casting doubt on its authenticity.

14. The aforesaid factual incidents which are emanating from the record clearly and strongly suggest that the alleged Will propounded by the Caveator did not exist at the time of date of the deceased. If the Caveator was treated to be just like the son of deceased or her nearest person his name would have been reflected either in the Will dated 18.12.2015 or the 4 Codicils prepared thereafter in 2016, 2018, 2019, 2023. From perusal of the above it is seen that the deceased has given her own nephew (sole legal heir) only a sum of money as opposed to the claim of the Caveator who is a

complete stranger and third party having no nexus of any nature with the deceased. The Caveator has failed to explain his acquaintance and nexus with the deceased altogether.

15. On the *prima facie* merits of the matter and a close scrutiny of the Wills and Codicils they clearly show that the signature of the deceased on the alleged Last Will and Testament dated 23.03.2023 appears to be completely different than the signature on the Will dated 18.12.2015 and the 4 Codicils. The said change is clearly evident to the naked eye. The writing of the first name of the deceased “Hilla” on the propounded Will dated 23.03.2023 as compared to the name written in the Will dated 18.12.2015 and the 4 Codicils virtually gives away the case of the Caveator. In the Will dated 18.12.2015 and 4 Codicils all witnesses have signed immediately below the signature of the deceased whereas in the Will propounded by the Caveator signature of two witnesses is on a new / completely different page altogether. Though it was vaguely argued by Mr. Parmar that the deceased had only in the 4th Codicil bequeathed the property namely the share in the bungalow to charity but however it is not so. The intention of the deceased is gathered from a combined reading of the Will and 4 Codicils together.

16. It is seen that in 2015 itself the deceased had made her intention clear about the Trust namely the HA and HH Dady Public

Charitable Trust which is stated in Clause 8 of the Will dated 18.12.2015 and clarified further in the Codicil. That apart it is seen that the deceased has bequeathed several movable bequests to persons who were very close to the deceased and who either worked for her or were known to her, therefore in this background and for over 8 years between 2015 and 2023 considering the intention of the deceased being consistent all throughout as also regarding bequeathal of her share in the bungalow to be donated to charity, there is virtually no conceivable reason for a change of her mind within 24 days between 27.02.2023 (date of the 4th Codicil) and 23.03.2023 (date of the alleged Will) to prepare the alleged Will propounded by the Caveator. It is further seen that the alleged Will does not name any Executor neither it makes any provision for the residue of the Estate of the deceased which is substantial in nature and this fact is clearly inconsistent with the deceased's prior practice and intent over a period of 8 years.

17. From the above it is clearly discernible that the alleged Will propounded by the Caveator did not exist at the time of the date of the deceased and the conduct of the Caveator strongly suggests that he has somehow managed to obtain the papers in the Testamentary Petition filed by the Applicants and has subsequently fabricated the alleged Will dated 23.03.2023 by using the information from the papers and material in the Testamentary Petition and claiming it to be

a genuine Will.

18. It is seen that the Aadhaar Card and the Death Certificate appended to the Affidavit-in-Support of the Caveat is not independently procured by the Caveator but is a photocopy of the Aadhaar Card and Death Certificate appended to the Testamentary Petition itself. This is *prima facie* evident when one looks at the manner in which the said xerox / photostat copy has been prepared on the face of record since the download date is the same. This clearly shows that the documents have been clearly lifted from the Testamentary Petition itself which gives away the case of the Caveator. The description of the property i.e. bungalow in the alleged Will appears to be directly lifted verbatim from the description in the Will propounded by the Applicants.

19. There is one more strong reason to not only accept the above suspicion but to fortify the same. It is seen that conduct of the Caveator even otherwise has been dubious which is exemplified by certain facts which have been placed on record. The execution of the alleged Will propounded by the Caveator within 24 days after the date of the last Codicil is highly suspicious. This Court in paragraph Nos.12 to 15 in the Judgement dated 14.08.2025 passed in Interim Application No. 1809 of 2024 has noted as under:-

“12) Mr. Dinyar Madan, learned Counsel for the Applicants submits that the Caveator is attempting to mislead this Court by

relying upon the purported Will dated 23rd March 2023, falsely claiming it to be genuine, despite being fully aware that it is false and fabricated. Upon inquiries within the Parsi community, it was discovered that the Caveator's own mother has filed a written statement in Suit No. 1905 of 2006 filed by the Caveator against his own family members, describing him as a mischievous person who has habitually attempted to extort money by blackmailing individuals for personal gain.

13) It has further come to light that the Caveator's stepfather and brother have also filed a written statements alleging that the Caveator has committed several illegal and criminal acts, and that criminal complaints have been filed against him in various police stations. His own family members have stated that the Caveator has initiated proceedings against his stepfather and mother with intent to blackmail and extort money from them.

14) It has also been discovered that the Caveator defrauded his wife by selling her father's house and misappropriating sums from his pension accounts. He is alleged to have fabricated Wills and other documents in addition to the present one, and civil and criminal proceedings have been initiated against him by his brother-in-law in the Girgaon Court and the City Civil Court.

15) The Caveator has also allegedly instigated another woman-whom he claims to be his wife to file a Suit No. 1285 of 2004 against her own family. These facts, it is submitted, demonstrate that the Caveator has a criminal disposition and is known to unlawfully usurp estate of others.”

20. Attention in this regard is invited to paragraph Nos.121 and 122 of a recent decision of the Division Bench of this Court in the case ***Myra Philomena Collaco Vs. Lilian Coelho and Ors.***¹ which are relevant in the present context and read thus:-

“121. Similarly, in ***Ram Piari vs. Bhagwant & Ors.***²⁴; in paragraph 23, the Supreme Court held that when suspicious circumstances exist, the Court should not be swayed by due execution of the Will alone. In ***Indu Bala Bose & Ors. vs. Manindra Chandra Bose & Anr.***²⁵ the Supreme Court held that every circumstance is not a suspicious circumstance. Paragraph 8 of the said judgment reads thus: -

8. Needless to say that any and every circumstance is not a “suspicious” circumstance. A circumstance would be “suspicious” when it is not normal or is not normally expected in a normal situation or is not expected of a normal person.”

¹ Appeal No.574 of 2003 in TS No.33 of 1999 – Decided on 30.12.2025.

*122. The Supreme Court in the Privy Council's decision in **Hames v. Hinkson** (supra) is now referred to, the relevant portion of which reads thus:-*

17.....where a Will is charged with suspicion, the rules enjoin a reasonable scepticism, not an obdurate persistence in disbelief. They do not demand from the Judge, even in circumstances of grave suspicion, a resolute and impenetrable incredulity. He is never required to close his mind to the truth."

21. From the above it is seen that the Caveator has a criminal disposition and is known to unlawfully usurp the estate of others. It is seen that this is not the first instance of he having alleged to have fabricated Wills and other documents. The Caveator has not even spared his own wife and there are criminal proceedings initiated against him by his brother in law in Girgaon Court and Bombay City Civil Court. The Judgment dated 14.08.2025 passed in IA 1809 of 2024 has directed the Prothonotary and Senior Master of the this Court to lodge an appropriate complaint against the Caveator before the Jurisdictional Magistrate in accordance with Sections 340(1)(b) and (c) read with Section 340(3) of the Code of Criminal Procedure, 1973.

22. From the above observations and findings, it is clearly derived that the Caveator who is a completely unrelated third party / stranger to the deceased has made a concerted attempt to usurp the estate of the deceased and once the intention of the Caveator is fairly revealed on the basis of the facts and circumstances, emanating from the record itself which are alluded to herein above, in my opinion,

Applicants have made out a very strong case for dismissal of the Caveat filed by the Caveator. Thus in view of the above the Interim Application stands allowed in terms of prayer clauses "a" and "b".

23. In my opinion, this is a fit case for enquiry as to how the Caveator got hold of the papers of the Testamentary Petition and whether any person working in the Testamentary Department of this Court has colluded with the Caveator in supplying him with the said documents. Such a possibility cannot be ruled out. The Prothonotary and Senior Master of this Court shall look into this aspect and conduct an internal probe at his level to ensure that all systems are in check to ensure that Testamentary proceedings once filed in Court are not leaked or fall into the wrong hands.

24. Resultantly, Interim Application is allowed and disposed in the above terms.

[MILIND N. JADHAV, J.]

Ajay

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