IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
TESTAMENTARY JURISDICTION

INTERIM APPLICATION NO. 2018 OF 2024
IN
TESTAMENTARY SUIT NO. 96 OF 2018

Mr. Vikram Madhukar Pethe …Applicant

IN THE MATTER BETWEEN:

Mr. Vikram Madhukar Pethe …Petitioner

Versus

People's Education Society …Respondent/Caveator

Mr. Shyam Kapadia a/w Mr. Shamant Satiya for the Petitioner.
Mr. Anil Anturkar, Senior Advocate a/w Mr. A.R.Gole, Mr. Kanhaiya S. Yadav, for the Respondent.

CORAM : ARIF S. DOCTOR, J.
DATE : 2nd NOVEMBER 2026

P.C:

1. The present Interim Application seeks dismissal of the caveat filed by the Respondent in the captioned Testamentary Petition, pursuant to which the Testamentary Petition was converted into the captioned Testamentary Suit.

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2. The Applicant, who is the Petitioner in the captioned Testamentary Petition, has filed the Testamentary Petition for probate of what is stated to be the last Will and Testament of one Smt Indumati Dattatraya Kale ("**the Testatrix**"). The Applicant, who is named as both the executor and beneficiary under the said Will and claims to be the nephew of the Testatrix.

3. The Respondent has opposed the Petition essentially on the ground that the Respondent claims an interest in certain agricultural lands bearing Gat Nos. and Sub Division Nos. 776/1, 776/4, 776/5, 776/8, 776/9, 776/12, 794/1 and 832, situated at Village-Dhokawade, Taluka-Alibag, District - Raigad ("**the said lands"),** which were bequeathed to the Respondent under the residuary clause of the Will of one Dr Dattatraya Nagesh Kale, i.e., the Testatrix Husband.

4. The Applicant seeks dismissal of the caveat on the ground that the Respondent is not a legal heir of the Testatrix, nor does the Respondent have any interest in the estate of the Testatrix. If at all, any claim that the Respondent might have is a purely civil claim pertaining to the title to the

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said lands and, hence, would fall outside the limited scope of testamentary proceedings.

5. Thus the present Interim Application.

Submission on behalf of the Applicant

6. Mr. Kapadia, learned counsel appearing on behalf of the Applicant, at the outset submitted that the Respondent did not have the necessary locus to oppose the Testamentary Petition since the Respondent was neither a legal heir of the Testatrix nor was the Respondent claiming an interest in the estate of the Testatrix or any interest derived through the Testatrix. He submitted that the Respondent was, in fact, a complete stranger to the estate of the Testatrix.

7. Mr. Kapadia then submitted that the Respondent's claim to the said lands was founded on the basis that the said lands belonged to Dr. Kale and had been bequeathed to the Respondent under the residuary clause of Dr. Kale's Will. He therefore was at pains to point out that the Respondent's contention

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was that the Testatrix did not have any right, title or interest in the said lands and, consequently, no testamentary power to bequeath them. He submitted that, even assuming that the Respondent could establish an interest under Dr. Kale's Will, such interest would necessarily be adverse to the Testatrix and, therefore, could not confer upon the Respondent a caveatable interest in the estate of the Testatrix.

8. Mr. Kapadia further submitted that, even if the Respondent's case were taken at its highest, no right in the said lands could have been acquired by the Respondent under Dr. Kale's Will. He pointed out that the said lands stood in the name of Dr. Kale's mother, Smt. Gangabai Nagesh Kale ("**Gangabai**"), in the revenue records both when Dr. Kale executed his Will and at the time of his death. More importantly, he submitted that Dr. Kale's Will itself expressly acknowledged that Gangabai had an independent estate which was not dealt with under his Will.

9. He then pointed out that Dr. Kale had predeceased Gangabai, having passed away on 8th September 1975, whereas Gangabai died on 19th February 1982.

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He submitted that the said lands, being the property of Gangabai, never devolved upon Dr. Kale and therefore could not have formed part of Dr. Kale's estate. Consequently, the residuary clause in Dr. Kale's Will, which dealt only with his own property and wealth through heirship, could not have included the said lands. He accordingly submitted that no interest in the said lands could have passed to the Respondent under Dr. Kale's Will and that the Respondent's reliance upon the residuary clause was therefore misplaced.

10. Mr. Kapadia finally submitted that the dispute concerning title to the said lands was already the subject matter of Regular Civil Suit No. 210 of 2017, instituted by the Applicant before the Civil Court at Alibaug, in which the Respondent was the Defendant. He pointed out that the Suit was presently at the stage of evidence and that the Respondent's claim to the said lands could, and ought to, be adjudicated in those proceedings. He submitted, however, that the mere pendency of such a title dispute could not confer upon the Respondent a caveatable interest in the estate of the Testatrix or furnish any basis for opposing the grant of probate.

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11. Mr. Kapadia then placed reliance upon the decision of the Hon'ble Supreme Court in ***Krishna Kumar Birla v. Rajendra Singh Lodha***[1] to submit that the jurisdiction of the Probate Court was confined only to determining the genuineness and validity of a Will and did not extend to adjudicating questions of title. He therefore submitted that a caveator must necessarily demonstrate an interest in the estate of the testator arising through a line of succession which would be defeated if probate of the Will in question were to be granted. He submitted that a person who asserts a title adverse to that of the testator, or challenges the testator's title or capacity to dispose of the property on grounds independent of the law of succession, is a stranger to the testamentary proceedings and has no caveatable interest.

12. Mr. Kapadia also placed reliance upon the decision of this Court in ***Surya Prakash S. Makharia v. Pramod Kumar Makharia***,[2] which he pointed out also held that a person setting up an adverse title to the estate of the testator cannot maintain a caveat and must seek adjudication of such title before the

[1] (2008) 4 SCC 300.
[2] 2024: Bombay High Court-OS:9803.

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competent Civil Court. Applying this ratio, he reiterated that the Respondent's claim was one which did not arise from any right of succession to the Testatrix's estate but from an alleged independent title under the Will of Dr. Kale. He therefore submitted that the Respondent was a stranger to the estate of the Testatrix and thus had no locus to oppose the Petition for Probate.

13. He submitted that even a reversioner, agnate or other family member could maintain a caveat only where, in the absence of a Will, there was a possibility of succession to the estate of the testator. He reiterated that the Respondent was not an heir of the Testatrix or part of the Testatrix line of succession, and the Respondent's claim was founded entirely on the basis of an independent title claimed to have been derived through the Will of Dr. Kale, the husband of the Testatrix. He thus submitted that the Respondent had no interest in the estate of the Testatrix which would be prejudiced by the grant of probate.

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14. He therefore reiterated that the Respondent's remedy, if any, was before the competent Civil Court and not in these proceedings since the only inquiry in testamentary proceedings was whether the Will in question had been validly executed in accordance with the provisions of the Indian Succession Act. He submitted that questions relating to the ownership, title and testamentary capacity to dispose of any property mentioned in the Will would fall outside the scope of probate proceedings since these questions were already the subject matter of a Civil Suit No. 210 of 2017, pending before the Alibaug Court.

15. Mr. Kapadia also submitted that accepting the Respondent's contention would open the floodgates to litigation, since anyone with a perceived interest in the estate of the deceased, including an interest which is adverse to that of the deceased, would then be entitled to file a caveat and oppose the grant of probate. He therefore submitted that such an interpretation ought to be avoided.

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16. Mr. Kapadia concluded by submitting that the Respondent had in fact accepted the said Will, as was evident from a perusal of the letter dated 6th June 1996 addressed by the Secretary of the Respondent to Shri Mahesh Pethe in which the Respondent had expressly referred to the Will of the Testatrix and sought restoration of possession of the premises in accordance with the directions contained therein. Mr. Kapadia submitted that the Respondent, having itself acknowledged the Testatrix's Will and having sought to enforce the rights and directions flowing from that Will, cannot now be permitted to oppose the grant of probate of the very same Will.

Submissions on behalf of the Respondent

17. Mr. Anturkar, learned Senior Counsel appearing on behalf of the Respondent, submitted that the Respondent had an interest in the said lands under the Will of Dr Kale which was duly probated. He then pointed out that by virtue of the residuary clause in Dr. Kale's Will, the said lands stood bequeathed to the Respondent after the Testarix's lifetime, and the

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Respondent was therefore entitled to maintain the caveat. This he submitted was sufficient for the Respondent to maintain the Caveat since the Respondent had an interest in the said lands.

18. He then submitted that the Applicant's contention that the said land belonged exclusively to the mother-in-law of the Testatrix was misplaced. He submitted that the said lands were the ancestral property of Naresh Kale, who was the father-in-law of the Testatrix and the father of Dr Kale, and hence the said lands devolved upon Dr. Kale.

19. Mr. Anturkar further pointed out that the Respondent's name was also reflected in the 7/12 extracts in respect of the subject properties, and it was thus that the Applicant had instituted a Civil Suit seeking a declaration that the Respondent had no right, title or interest in the properties. He submitted that all of this sufficiently established that the Respondent had an interest in the subject properties, thus entitling the Respondent to file a Caveat.

20. Mr. Anturkar submitted that the Applicant's reliance upon the decision of the Hon'ble Supreme Court in ***Krishna Kumar Birla*** was misplaced, since the

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question of caveatable interest was subsequently considered by the Hon'ble Supreme Court in the case of ***G. Gopal v. C. Baskar and Others***,[3] which recognised that even a slight interest in the estate of the Testator would be sufficient to entitle a person to lodge a caveat and contest the grant of probate. He also placed reliance upon the decision of the Hon'ble Supreme Court in ***Jagjit Singh v. Pamela Manmohan Singh***[4] to point out that, after noting the divergent views expressed in ***Krishna Kumar Birla*** and ***G. Gopal***, the Hon'ble Supreme Court had referred the issue of whether a person claiming an interest in the estate was entitled to citation and had a caveatable interest to a larger bench. He submitted that the reference, however, remained unanswered, as the underlying Civil Appeal No. 8031 of 2001 was subsequently withdrawn and dismissed as such.

21. Mr. Anturkar, however, pointed out that even in the case of ***Krishna Kumar Birla***, the Hon'ble Supreme Court had recognised that the existence of a caveatable interest must depend on the facts and circumstances of each case

[3] 2008 (10) SCC 489.
[4] 2010 (5) SCC 157.

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and that no inflexible rule could be laid down in this regard. He therefore submitted that whether a person possesses a caveatable interest must necessarily be determined having regard to the facts and circumstances of each case and, in particular, the nature of the interest asserted.

22. He also placed reliance upon the decision of the Hon'ble Supreme Court in ***S. Leorex Sebastian v. Sarojini***,[5] to point out that, although the Appellants in that case were not legal heirs of the Testator, they were nevertheless held to be persons interested in the estate of the Testator, since they had acquired the properties in question through the Testator. He pointed out that the Hon'ble Supreme Court had in the case of ***S. Leorex Sebastian*** specifically considered the decisions in ***Krishna Kumar Birla*** and ***G. Gopal***, as well as the provisions of Section 283 of the Indian Succession Act, 1925.

23. He thus submitted that the Hon'ble Supreme Court had, in ***S. Leorex Sebastian***, recognised that caveatable interest was not confined to an interest arising by way of succession to the estate of the Testator, but extended to an

[5] 2026 INSC 400.

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interest in the properties forming part of the Testator's estate. He submitted that the Appellants in the case of ***S. Leorex Sebastian*** were, in substance, asserting a title adverse to the estate of the Testator and thereby disputing the Testator's entitlement to bequeath the properties in question at the time of his death. Despite this, the Hon'ble Supreme Court held that the Appellants were persons whom the probate Petitioner ought to have joined as parties to the testamentary proceedings.

24. Mr. Anturkar submitted that an adverse claim may arise in different circumstances, whether through a transfer effected by the testator during his lifetime or through an independent assertion of title. According to him, the source from which the interest arises was not determinative of a caveatable interest. He submitted that the material question was whether the caveator could demonstrate an interest in the property that was the subject matter of, or was affected by, the testamentary disposition. Applying this principle to the facts of the present case, he submitted that the Respondent's claim under the duly probated Will of Dr. Kale, coupled with the revenue entries

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recording the Respondent's name and the pending civil proceedings between the parties was sufficient to establish that the Respondent had an interest in the said land and was thus entitled to oppose the grant of probate.

25. Mr. Anturkar also placed reliance upon the decisions in ***Vijay Shivram Pathare v. City Corporation Ltd.***,[6] ***Chandrakant Jadhav v. Mandar Jadhav***,[7] ***Elizabeth Anthony v. Michael***,[8] ***Saroj Agarwal v. Yashil Jain***[9] and ***Manek Dara Sukhadwala v. Shernaz Lawyer***[10] in support of his contention that a broader approach must be adopted in determining caveatable interest. He reiterated that, in adopting such an approach, the Court must consider both the nature of the claimed interest in the property and the circumstances in which it was asserted.

26. Mr. Anturkar further submitted that, although several of the decisions relied upon by him arose in the context of applications for revocation of probate, the principles determine whether a caveatable interest existed or not. He

[6] 2023 SCC OnLine Bom 721.
[7] Judgment dated 24th February 2026 in Testamentary Petition No. 42 of 2018.
[8] (1990) 3 SCC 333.
[9] (2017) 14 SCC 285.
[10] 2012(6) Maharashtra Journal 239.

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submitted that Section 283 of the Indian Succession Act, 1925, must receive an inclusive interpretation so as to ensure that persons whose interests may be affected by the grant of probate are afforded an opportunity of being heard. Such an approach, he submitted, would also avoid multiplicity of proceedings.

27. Mr. Anturkar then addressed the Applicant's concern that recognising an adverse claim as sufficient to establish a caveatable interest would open the floodgates of litigation, and submitted that this apprehension was based on the erroneous assumption that permitting a person to lodge a caveat would enlarge the jurisdiction of the Probate Court. He submitted that, for the limited purpose of determining whether a person has a caveatable interest, the Court is required only to ascertain, *prima facie*, whether the caveator has some right or interest in the property referred to in the Will. He submitted that it was neither necessary nor permissible for the Probate Court at that stage to finally adjudicate upon the caveator's title or determine the precise

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extent or validity of the interest asserted. Those questions, he submitted, would fall within the jurisdiction of the competent Civil Court.

28. He therefore submitted that recognising the Respondent's caveatable interest would not enlarge the limited jurisdiction of the Testamentary Court. He submitted that probate proceedings would continue to remain confined to determining the validity and due execution of the Will and such other matters that fall within the jurisdiction of the Probate Court. The fact that the Respondent's claim may involve questions of title, or that such questions may be pending before the Civil Court, would not, according to him, disentitle the Respondent from participating in the probate proceedings, provided the Respondent otherwise establishes a sufficient interest in the properties referred to in the Will.

29. Mr. Anturkar submitted that the Respondent had demonstrated that the Respondent had sufficient interest in the subject properties and that the Applicant was admittedly aware of the Respondent's competing claim. He therefore submitted that the Respondent was entitled to oppose the grant of

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probate. He submitted that the Respondent's claim could not be rejected merely because the Respondent was claiming title adverse to the Testatrix or because questions concerning title were pending before the Civil Court. In the circumstances, he prayed that the Interim Application seeking dismissal of the Caveat be rejected.

Reasons and Conclusions

30. After considering the rival contentions and the relevant case law, I find that the Application must be allowed. I say so for the following reasons.

A. It is not in dispute that the only basis on which the Respondent has filed a caveat is the residuary clause in the Will of Dr. Kale. It is the Respondent's case that, by virtue of the residuary clause in Dr. Kale's Will, the said lands were bequeathed to the Respondent. Thus, clearly, the Respondent is making a claim which is *ex facie* adverse to the estate of the Testatrix. The Respondent is neither claiming through the Testatrix nor on the basis of any interest that it has in the estate of the

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Testatrix. Therefore, while the Respondent might be interested in the estate of the Testatrix, the question is whether such interest is sufficient to maintain a caveat.

B. The Hon'ble Supreme Court, in ***Krishna Kumar Birla v. Rajendra Singh Lodha***, has specifically held that a caveator must have an interest in the estate of the Testator and the interest must be such that it would be defeated by the grant of probate. Therefore, what must be affected is an interest in the ordinary line of succession through which the caveator claims. A person who questions the title of the Testator or the Testator's capacity to dispose of property by Will, on grounds falling outside the law of succession, is a stranger to the probate proceedings and would not have locus to file a caveat. This Court, in ***Surya Prakash S. Makharia***, has also held that a person who opposes the grant of probate by setting up an adverse title or by disputing the very existence of the estate disposed of by the deceased does not have a caveatable interest, since such a claim would necessarily require an

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adjudication of title, which lies beyond the jurisdiction of the Testamentary Court.

C. In my view, the Respondent's reliance on paragraph 103 of the decision of the Hon'ble Supreme Court in the case of ***Krishna Kumar Birla***, which observes that the question of caveatable interest must depend on the facts and circumstances of each case, is misplaced. Firstly, the said observation cannot be read in isolation, and secondly and crucially in the present case, the Respondent's claim is one of adverse title and is therefore squarely covered by the paragraph 86(iii) of the decision, in ***Krishna Kumar Birla***, which specifically holds as follows:

"86. The propositions of law which in our considered view may be applied in a case of this nature are:

(i) To sustain a caveat, a caveatable interest must be shown.
(ii) The test required to be applied is: does the claim of grant of probate prejudice his right because it defeats some other line of succession in terms whereof the caveator asserted his right.

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(iii) It is a fundamental nature of a probate proceeding that whatever would be the interest of the testator, the same must be accepted and the rules laid down therein must be followed. The logical corollary whereof would be that any person questioning the existence of title in respect of the estate or capacity of the testator to dispose of the property by Will on ground outside the law of succession would be a stranger to the probate proceeding inasmuch as none of such rights can effectively be adjudicated therein."

(emphasis supplied)

D. The decision in ***G. Gopal v. C. Baskar*** would not assist the Respondent, for two reasons. First, the factual context in which the said decision was rendered was materially different. Second, the principles laid down by the Hon'ble Supreme Court in ***Krishna Kumar Birla*** were neither considered nor applied in the said decision. Equally, the decision in ***Jagjit Singh v. Pamela Manmohan Singh*** would not assist the Respondent since, in that case, the Hon'ble Supreme Court merely noticed the divergence of views between ***Krishna Kumar Birla*** and ***G. Gopal*** and then referred the question as to the scope of "caveatable interest" to a larger bench, which

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admittedly remained unanswered. In these facts, I find that the decision in ***Krishna Kumar Birla*** would therefore continue to hold the field with regard to what constitutes a caveatable interest.

E. The decisions in ***Vijay Pathare v. City Corporation, Chandrakant Jadhav v. Mandar Jadhav, Elizabeth Anthony v. Michael, Saroj Agarwal v. Yashil Jain*** and ***Manek Dara Sukhadwala v. Shernaz Lawyer***, upon which reliance was placed by the Respondent, would also not apply. A careful reading of these decisions shows that they either proceeded on the basis that the persons seeking to intervene in the testamentary proceedings had an interest in the estate of the deceased or arose in materially different factual circumstances.

F. The decision in ***S. Leorex Sebastian*** would also not apply, since that decision was rendered in the context of proceedings for revocation of a grant under Section 263 of the Indian Succession Act, 1925, on the ground of suppression of material facts and non-citation of persons who had acquired an interest in the property through transfers

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originating from the Testator himself. In the present case, the Respondent, in my view, is seeking to conflate two distinct enquiries. Section 263 concerns the revocation of an existing grant for just cause, whereas Section 283 concerns the issuance of citations to persons claiming an interest in the estate of the deceased. The fact that a person may have grounds to seek revocation of a grant of probate or letters of administration does not, axiomatically, mean that such a person would have a caveatable interest. To hold so would plainly do violence to the scheme of Section 283 of the Indian Succession Act, apart from being contrary to the decision of the Hon'ble Supreme Court in ***Krishna Kumar Birla***.

G. On the Respondent's own showing Dr. Kale died on 8th September 1975, whereas his mother, Gangabai, died thereafter, on 19th February 1982. Dr. Kale, having predeceased his mother, could never have inherited her property. The Respondent merely asserts that Naresh Kale was the original owner of the ancestral properties but has not

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demonstrated how the said lands came to vest in Dr. Kale so as to fall within the residuary clause of his Will. It is the Respondent's own case that its claim is under the residuary clause, which would therefore necessarily require the Respondent to first establish that Dr. Kale had title to the said lands. Such an inquiry is plainly beyond the scope of Testamentary proceedings.

H. The 7/12 extracts bearing the Respondent's name, as well as the Applicant's knowledge of the Respondent's claim, are the very matters which gave rise to Regular Civil Suit No. 210 of 2017, which is presently at the stage of evidence before the Civil Court at Alibag, where the question of title is directly in issue. If anything, the pendency of that Suit reinforces the conclusion that the Respondent's claim is one of adverse title and that the appropriate forum for adjudication of that claim is the Civil Court.

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31. For the reasons stated above, I pass the following order:

ORDER

i. The Interim Application is thus allowed in terms of prayer clauses (a) and (b) and is accordingly disposed of.

ii. There shall be no orders as to costs.

[ARIF S. DOCTOR, J.]

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