



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.351 OF 2023

Sunil Waman Bhide ....Applicant  
V/S  
Chandahas Laxman Kanhere & Ors. ....Respondents

WITH  
INTERIM APPLICATION NO.38657 OF 2025  
IN  
CIVIL REVISION APPLICATION NO.351 OF 2023

Sunil Waman Bhide ....Applicant  
IN THE MATTER BETWEEN  
Sunil Waman Bhide ....Applicant  
V/S  
Chandahas Laxman Kanhere & Ors. ....Respondents

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**Dr. Abhinav Chandrachud** i/b Mr. Rhishikesh M. Pethe *for the Applicant.*

**Mr. S.M. Gorwadkar, Senior Advocate** with Mr. Swaraj M. Sawant,  
Mr. Harshal N. Mule and Mr. Varun H. Thanawala i/b Mr. Sujay H. Gangal  
*for Respondent Nos.1 to 4.*

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**CORAM : SANDEEP V. MARNE, J.**  
**RESERVED ON : 07 MARCH 2026.**  
**PRONOUNCED ON : 17 MARCH 2026.**

**JUDGMENT:**

1. The Applicant has invoked revisionary jurisdiction of this Court under Section 115 of the Code of Civil Procedure, 1908 (**Code**) for challenging the order dated 20 December 2022 passed by the 11<sup>th</sup> Joint Civil Judge Senior Division, Pune rejecting application at Exhibit-52

filed by him seeking dismissal of Miscellaneous Application No. 616 of 2013 filed by Respondent Nos.1 to 4. The Misc. Application is filed by Respondent Nos. 1 to 4 seeking revocation of probate and according to Applicant, the same is not maintainable as the revocation of probate is sought mainly on the ground that the testator did not have title in the properties in respect of which she executed the Will.

2. Very briefly stated, facts of the case are that Nalini alias Rajeshwari Nagarkar (**Rajeshwari**) executed her Will dated 23 August 2005 in respect of various properties at Satara and bequeathed some of the properties enumerated in paras-6(a) and (b) of the Will in favour of her son-in-law, Shri. Sunil Waman Bhide (Applicant). The balance properties were bequeathed to her three children. Respondent No.-5 Balkrishna Digambar Thatte was named as executor in the Will. The testator passed away on 8 November 2008. The Executor filed Miscellaneous Application No. 26 of 2010 for grant of probate in respect of the Will dated 23 August 2005 before the Court of Civil Judge Senior Division, Pune. The probate was granted by the Court on 13 December 2011. On or about 2 May 2013, Lakshman Gopal Kanhere and Chandrahas Laxman Kanhere filed Misc. Application No. 616/2013 (**MA**) seeking revocation of the probate under Section 383 of the Indian Succession Act, 1925. The Applicant appeared in Miscellaneous Application and sought framing of preliminary issues on maintainability of the MA. By order dated 22 July 2014, Court framed preliminary issues about maintainability of the MA. However, by order dated 13 January 2016, the Trial Court proceeded to hold that MA was maintainable and rejected Applicant's objection of maintainability.

3. Applicant challenged order dated 13 January 2016 passed by the Trial Court holding the MA to be maintainable before this Court by filing Civil Revision Application No.149 of 2016. By Order dated 20 February 2018, the Revision Application was disposed of granting liberty to the Applicant to prefer fresh application for deciding the objection of maintainability. Accordingly, Applicant preferred application at Exhibit-52 once again praying for framing of preliminary issue and for deciding the issue of maintainability. By the impugned order dated 20 December 2022, the Trial Court has proceeded to reject Applicant's application holding that MA for revocation of probate was maintainable. Aggrieved by the order dated 20 December 2022, the Applicant has preferred the present Revision Application. It appears that during the pendency of the application, Respondent No.3 has passed away. However, her legal heirs are already on record as pointed out in Interim Application No. 38657 of 2025.

4. Dr. Chandrachud, the learned counsel appearing for the Applicant submits that the Trial Court has erred in rejecting the objection of maintainability raised by the Applicant by relying on judgment of the Apex Court in *G. Gopal vs. C. Bhaskar and Ors.*<sup>1</sup> In *G. Gopal* (supra), the Apex Court did not notice the earlier judgment in *Krishna Kumar Birla vs. Rajendra Singh Lodha and Ors.*<sup>2</sup> in which it is ruled that to sustain a caveat, caveatable interest must be shown and that the Court must proceed on acceptance of interest of the testator. That it has further held that a person questioning existence of title in respect of estate or capacity of the testator to dispose of the property by Will would be

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1 (2008) 10 SCC 489

2 (2008) 4 SCC 300

stranger to the probate proceedings and none of such rights can be effectively adjudicated in the probate proceedings. He further submits that in *Jagjit Singh and Ors. vs. Pamela Manmohan Singh*<sup>3</sup>, the Apex Court noted the conflict in the decisions in *Krishna Kumar Birla* and *G. Gopal* and made a reference to the larger bench. However, the appeal in *Jagjit Singh* was withdrawn without answering the reference. He relies on judgment of the Apex Court in the case of *Saroj Agarwalla vs. Yasheel Jain*,<sup>4</sup> which follows the judgment in *Krishna Kumar Birla*. He therefore submits that now the law is fairly well settled that person questioning title of the testator and right to execute will, does not have a caveatable interest. That in the present case, Respondent Nos.1 to 4 essentially seek to question title of the testator and right to make Will and therefore application for revocation of probate filed by them is clearly not maintainable.

5. The Application is opposed by Mr. Gorwadkar, the learned Senior Advocate appearing for Respondent Nos.1 to 4. He submits that filing of Application for probate by the Applicant was itself an exercise in futility. That the probate itself is superfluous and inconsequential. He submits that the properties are at Satara and the alleged Will is executed at Pune and that therefore, there is no requirement of seeking probate under Section 213 read with Section 57 of the Indian Succession Act, 1925. That Applicant has unnecessarily secured probate in respect of the alleged Will, which has no valid existence in law. In support of his contention that it is unnecessary to secure probate in respect of Will executed outside the ordinary original civil jurisdiction of this Court,

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3 (2010) 5 SCC 157

4 (2017) 14 SCC 285

Mr. Gorwadkar relies on judgments of this Court in *Jyoti Jagdish Singhai vs. State of Maharashtra*<sup>5</sup>, *Kantabai Mahipat Sonavane vs. Nimba Onkar Patil*<sup>6</sup>. He also relies on judgment of Apex Court in *Kanwarjit Singh Dhillon vs. Hardyal Singh Dhillon & Ors*<sup>7</sup> in support of his contention that Probate Court is not competent to determine the question of title to the suit properties. He submits that the real dispute between the parties is in respect of title, which otherwise cannot be adjudicated in probate proceedings. That the contesting Respondents have filed a substantive suit involving the issue of title. He submits that Respondent Nos.1 to 4 have share in the property allegedly bequeathed by Rajeshwari. That therefore it is necessary for Respondent Nos.1 to 4 to ensure that Applicant does not claim any rights on the strength of superfluous probate secured by him. He would submit that the Trial Court has applied its mind to the objection of the Applicant and has twice rejected the baseless objection of the Applicant. He would therefore pray for dismissal of the Revision Application.

6. In rejoinder, Dr. Chandrachud submits that there is no prohibition under the statutory scheme of the Indian Succession Act on issuing probate in respect of Will executed outside territorial limits of ordinary original civil jurisdiction of this Court. In support, he relies on judgment of this Court in *Mahesh N. Bhat vs. Mark Uppaluri*<sup>8</sup>.

7. Rival contentions raised on behalf of the parties now fall for my consideration.

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5 1979 Mh.L.J. 308

6 1999 (4) ALL MR 263

7 (2007) 11 SCC 357

8 2018 SCC OnLine Bom 9891

8. Applicant has secured probate in respect of Rajeshwari's Will dated 23 August 2005 from the Court of Civil Judge Senior Division, Pune, vide order dated 13 December 2011. The probate is secured on an application made by the Executor Shri Balkrishna Digambar Thatte, Respondent No.5.

9. Rajeshwari and Laxman are the children born to Radhabai. Rajeshwari was married to Pandurang Nagarkar and has two sons Shrinivas and Abhiram, and one daughter Priya Bhide. Applicant is husband of Priya Bhide. Thus, Applicant is son-in-law of Rajeshwari. Under Rajeshwari's Will dated 23 August 2005, Rajeshwari bequeathed properties bearing House Nos.90 and 91, Shaniwar Peth, Satara, and plot alongwith structures standing thereon at Kamathipura, Sadar Bazar, Satara Camp in favour of her son-in-law Sunil Bhide (Applicant). The other two properties being agricultural lands and other properties described in paragraph 5 are bequeathed in favour of her three children Shrinivas, Abhiram and Priya in equal shares. The Executor has obtained probate in respect of Rajeshwari's Will.

10. Rajeshwari's brother Laxman Kanhere got aggrieved by issuance of probate in respect of his sister-Rajeshwari's Will. Laxman, alongwith his son- Chandrahas Kanhere have accordingly filed Civil Miscellaneous Application No.616 of 2013 in the Court of Civil Judge Senior Division for revocation of probate dated 5 October 2011 in respect of Rajeshwari's Will. Laxman and Chandrahas essentially contended in their revocation Application that Radhabai (mother of Rajeshwari and Laxman) had executed Will dated 17 February 1992, apparently

bequeathing properties in the name of Rajeshwari. It is contended that on 21 November 1997, the mother Radhabai made fresh Will bequeathing properties in the name of Chandrahas. It is therefore contended that by subsequent Will dated 21 November 1997, the earlier Will executed by Radhabai in the name of Rajeshwari on 17 February 1992 has been cancelled and that therefore Rajeshwari did not have any right, title or interest in the concerned properties and did not have right to execute the Will dated 23 August 2005. The relevant pleadings in Civil Miscellaneous Application No. 616 of 2013 read thus:

“(३) ता. १७ फेब्रुवारी १९९२ रोजी श्रीमती राधाबाई गोपाळ कान्हेरे यांनी मृत्युपत्र करून ठेवलेले होते. ते मृत्युपत्र राधाबाई गोपाळ कान्हेरे यांनी ता. २१/११/१९९७ रोजी अखेरचे मृत्युपत्र करून ठेवून ते मृत्युपत्र यातील अर्जदार नं. २ श्री. चंद्रहास कान्हेरे यांचे नावे करून ठेवलेले आहे. त्यामुळे राधाबाई कान्हेरे यांनी करून ठेवलेले १९९२ चे राजेश्वरी पांडुरंग नगरकर यांचे नावचे मृत्युपत्र संपुष्टात आलेले आहे. त्यामुळे ता. १७ फेब्रुवारी १९९२ रोजी राधाबाई गोपाळ कान्हेरे यांनी राजेश्वरी पांडुरंग नगरकर यांना करून दिलेले मृत्युपत्र रद्दबातल झालेले आहे. त्यामुळे सन १९९२ चे मृत्युपत्रावरून राजेश्वरी नगरकर यांना काहीही हक्क प्राप्त होत नाही. १९९२ च्या मृत्युपत्राने व ते मृत्युपत्र ता. २१/११/१९९७ च्या अखेरच्या मृत्युपत्रान्वये रद्द झाले असलेमुळे राजेश्वरी पांडुरंग नगरकर यांना ता. २३ ऑगस्ट २००५ रोजी रद्द केलेल्या मृत्युपत्रातील मिळकतीबाबत मृत्युपत्र कायद्याने करता येणार नाही नाही.”

11. Thus, Civil Miscellaneous Application No.616 of 2013 is filed essentially contending that Rajeshwari did not have title in the properties which she bequeathed *inter alia* in favour of Applicant and that therefore the probate must be revoked.

12. The short issue that arises for consideration is whether probate can be revoked on the ground of absence of title or capacity of testator to make the Will.

13. The Applicant has relied on judgment of the Hon'ble Supreme Court in ***Krishna Kumar Birla*** (supra) in which it is held that to sustain a caveat, a caveatable interest must be shown. The test, according to the Supreme Court, is whether the probate prejudices the right of the caveator because it defeats some other line of succession in terms whereof the caveator asserts his rights. The Apex Court has further held that any person questioning existence of title in respect of the estate or capacity of the testator to dispose of property by will on the ground outside the law of succession, becomes a stranger to the probate. The Apex Court has held in paragraphs 86 and 135 of the judgment as under:

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

- (i) To sustain a caveat, a caveatable interest must be shown.
- (ii) The test required to be applied is: Does the claim of grant of probate prejudice his right because it defeats some other line of succession in terms whereof the caveator asserted his right?
- (iii) It is a fundamental nature of a probate proceeding that whatever would be the interest of the testator, the same must be accepted and the rules laid down therein must be followed. The logical corollary whereof would be that **any person questioning the existence of title in respect of the estate or capacity of the testator to dispose of he 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.”

135. 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 or an agnate or a family member can maintain a caveat only when there is a possibility of his inheritance of the property in the event the probate of the will is not granted.** If there are heirs intestate who are alive, entertaining of a caveat on the part of another family member or a reversioner or an agnate or cognate would never arise.

*(emphasis added)*

14. It appears that without noticing the ratio of the judgment in ***Krishna Kumar Birla***, a Bench of coequal strength of the Hon'ble



Supreme Court later struck a slightly discordant note on the issue in *G. Gopal* (supra) in which it is held that a person who has even a slight interest in the estate of the testator is entitled to file caveat and contest the grant of probate of the will of the testator. It is held in paragraph 5 of the judgment in *G. Gopal* thus:

“5. The only question that was agitated before us by Mr Thiagarajan, learned counsel appearing for the appellant challenging the judgment of the High Court revoking the probate granted in respect of the will executed by the testator, was that the respondents having no caveatable interest in the estate of the deceased, the application for revocation filed by them could not be allowed. We are unable to accept these submissions made by Mr. Thiagarajan, learned counsel appearing on behalf of the appellant only for the simple reason that admittedly the respondents were grandchildren of the testator and they have claimed the estate of the deceased on the basis of a settlement deed executed by the testator himself which admittedly was revoked by the testator. That being the position, we must hold that the respondents had caveatable interest in the estate of the testator and, therefore, they are entitled to be served before the final order is passed. **It is well settled that if a person who has even a slight interest in the estate of the testator is entitled to file caveat and contest the grant of probate of the will of the testator.**”

*(emphasis added)*

15. In *G. Gopal*, the Respondents before the Supreme Court, who had sought revocation of the probate, were grandchildren of the testator and had claimed estate of the testator on the basis of the settlement deed executed by the testator and this was an admitted position. Thus if the probate was revoked and the will was declared ineffective, the Respondents therein would have succeeded to the estate of the testator. Thus it appears that the judgment in *G. Gopal* is rendered in the peculiar facts of the case where revocation of probate would have resulted in the caveators inheriting the estate of the testator through the testator. It also appears that the attention of the Hon’ble Supreme Court was not invited to the law declared in the judgment in *Krishna Kumar Birla* while rendering the judgment in *G. Gopal*. A very short time gap divides the

two judgments. The judgment in ***Krishna Kumar Birla*** was rendered at a prior point of time on 31 March 2008 whereas the judgment in ***G. Gopal*** was rendered subsequently on 3 September 2008. Also, there appears to be harmony in the judgments in ***Krishna Kumar Birla*** and ***G. Gopal*** with regard to the principle that a person, who is likely to succeed to the estate of the testator upon revocation of the probate, can have a caveatable interest. However, the observations in ***G. Gopal*** towards the end of paragraph 5 that ‘*a person who has even a slight interest in the estate of the testator is entitled to file caveat and contest the grant of probate of the will of the testator*’ creates an impression of some conflict in the views expressed in the two judgments.

16. In ***Jagjit Singh*** (supra) a two Judge Bench of the Hon’ble Supreme Court noticed the above conflict in views expressed in ***Krishna Kumar Birla*** and ***G. Gopal*** and accordingly made a reference to the larger Bench.

21. It is thus evident that apparently conflicting views have been expressed by the coordinate Benches of this Court on the interpretation of the expression “caveatable interest”. In *Krishna Kumar Birla* case [(2008) 4 SCC 300] the Bench did not approve the judgments of the Calcutta High Court in *Bhobosoonduri Dabee* case [ILR (1881) 6 Cal 460] and the Madras High Court in *G. Jayakumar* case [AIR 1972 Mad 212] wherein it was held that any person having some interest in the estate of the deceased can come forward and oppose the grant of probate. As against this, in *G. Gopal* case [(2008) 10 SCC 489], the dictum that a person who is having a slight interest in the estate of the testator is entitled to file caveat and contest the grant of probate has been reiterated.

22. This being the position, we feel that the issue deserves to be considered and decided by a larger Bench. The Registry is directed to place the matter before the Hon’ble the Chief Justice for appropriate order.

17. However, it appears that the very Civil Appeal in ***Jagjit Singh*** came to be withdrawn and accordingly, the reference remained undecided.

18. However thereafter, in ***Saroj Agarwalla*** (supra) two Judge Bench of the Apex Court, in the judgment delivered in the year 2017, has followed the ratio of the judgment in ***Krishna Kumar Birla*** (supra) and has held in paragraph 9 as under:

“9. The learned counsel for both the parties have addressed us at some length as to the meaning of the words "caveatable interest". The matter is no longer res integra in view of a detailed discussion of this term in ***Krishna Kumar Birla v. Rajendra Singh Lodha***, (2008) 4 SCC 300. Paras 59 to 86 of this judgment refer to large number of authorities of this Court as well as various High Courts. The conclusions flowing from that judgment including the proposition of law in para 86 clearly support the case of the respondents in both the appeals that they have a caveatable interest. **The test which may be applied in the present case is: Does the claim of grant of probate prejudice the respondent's right because it defeats some other line of succession in terms whereof the respondent as a caveator asserted his/her right? Since the answer, in the facts of the case would be in the affirmative, we are in agreement with the view taken by the Division Bench that the respondents have a caveatable interest.**”

(emphasis added)

19. Though Mr. Gorwadkar has relied upon judgment of the Apex Court in ***Kanwarjit Singh Dhillon*** (supra), far from assisting the case of his clients, the judgment actually militates against them. The judgment in ***Kanwarjit Singh Dhillon*** has been considered by the Hon’ble Supreme Court in ***Krishna Kumar Birla***. It is held by the Hon’ble Supreme Court in ***Kanwarjit Singh Dhillon*** that it is not competent for Probate Court to determine whether the testator had the authority to dispose of the properties purported to be bequeathed by the will. It is further held that Probate Court is not competent to determine question of title, nor it can go into the question whether the properties bequeathed by the will were joint ancestral properties or acquired properties of the testator. It is held in paragraph 11 of the judgment as under:

“11. ... It is well-settled law that the functions of a Probate Court are to see that the will executed by the testator was actually executed by

him in a sound disposing state of mind without coercion or undue influence and the same was duly attested. **It was, therefore, not competent for the Probate Court to determine whether late S. Kirpal Singh had or had not the authority to dispose of the suit properties which he purported to have bequeathed by his will. The Probate Court is also not competent to determine the question of title to the suit properties nor will it go into the question whether the suit properties bequeathed by the will were joint ancestral properties or acquired properties of the testator.**"

*(emphasis added)*

20. It would also be apt to take note of judgments of various High Courts which have noticed the conflicting views expressed by the Hon'ble Supreme Court in judgments in *Krishna Kumar Birla* and *G. Gopal* (supra). In *Jagdish Asarpota vs. Kusum Bharat Asarpota*<sup>9</sup> a Single Judge of this Court, after taking note of the conflicting views expressed in the two judgments, has held that the Hon'ble Supreme Court did not notice the prior judgment in *Krishna Kumar Birla* while delivering the judgment in *G. Gopal*. This Court held in paragraphs 29 and 35 as under:

"29. Supreme Court in case of *Krishnakumar Birla v. Rajendra Singh Lodha* (supra) has held that the jurisdiction of the Probate Court is limited being confined only to consider the genuineness of the Will. A question of title arising under the Act cannot be gone into the proceedings. Construction of a Will relating to the right, title and interest of any other person is beyond the domain of the Probate Court. A person to whom a citation is to be issued or a caveator must have some interest in the estate of the testator. Any person claiming any interest adverse to the testator or his estate cannot maintain any application before the Probate Court. His remedy would be elsewhere. It is held that the person who seeks to file a caveat must have an interest in the estate left by the deceased. An interest must be wide one but such an interest must not be one which would have the effect of destroying the estate itself. Supreme Court in the said judgment has held 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. It is held that a probate proceedings should not be permitted to be converted into a title suit and should not be permitted to become an unchartered field to be trespassed into by persons even if he is not affected by testamentary disposition. A contention can be raised only by a person who has a caveatable interest. Supreme Court has held that if there are

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9 2015 (1) Mh.L.J. 127

heirs intestate who are alive, entertaining of a caveat on the part of another family of a reversioner or an agnate or cognate would never arise.

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35. Insofar as judgment of Supreme Court in case of *G. Gopal* (supra) relied upon by the learned counsel appearing for the caveators is concerned, it is clear that the Supreme Court did not notice the judgment in case of *Krishnakumar Birla v. Rajendra Singh Lodha* (supra) in the said judgment. In any event, the facts of the case before the Supreme Court in the said case are different.”

(emphasis added)

21. The Calcutta High Court in *Pemla Ghosal v. Neelanjana Ghosal*<sup>10</sup> has also noted the conflict in the judgments of the Apex Court and has held thus:

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

(emphasis added)

22. The Division Bench of the Delhi High Court in *Vinod Kumar Aggarwal v. State and Ors*<sup>11</sup> has also noticed the conflict in views of the judgments in *Krishna Kumar Birla* and *G. Gopal* and has also noticed withdrawal of the Appeal in *Jagjit Singh* rendering the reference to the larger Bench unanswered. The Division Bench of the Delhi High Court

10 2011 SCCOnline Cal 644

11 FAO/OS 32 of 2020 decided by Delhi High Court on 22 December 2023

has however followed the ratio of the Apex Court judgment in ***National Insurance Co. Ltd. v. Pranay Sethi and Ors.***<sup>12</sup> and held that since the judgment in ***Krishna Kumar Birla*** was not noticed in ***G. Gopal***, it was bound by the ratio of the judgment in ***Krishna Kumar Birla***. The Delhi High Court has held thus:

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

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

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

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

17. In *State of Bihar v. Kalika Kuer alias Kalika Singh and others*, it has been held: - "10. ... an earlier decision may seem to be incorrect to a Bench of a coordinate jurisdiction considering the question later, on the ground that a possible aspect of the matter was not considered or not raised before the court or more aspects should have been gone into by the court deciding the matter earlier but it would not be a reason to say that the decision was rendered per incuriam and liable to be ignored. The earlier judgment may seem to be not correct yet it will have the binding effect on the later Bench of coordinate jurisdiction. ..."

The Court has further ruled:

"10. ... Easy course of saying that earlier decision was rendered per incuriam is not permissible and the matter will have to be

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12 (2017) 16 SCC 680

resolved only in two ways -- either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits."

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

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

*(emphasis added)*

23. However, recently, the Apex Court has held in *A. P. Electrical Equipment Corporation Vs. Tahsildar & Ors.*<sup>13</sup> that if the two judgments of the Supreme Court are inconsistent, the High Court cannot follow one by overlooking the other. The High Court needs to respect both the decisions and attempt to reconcile them and follow that decision whose facts appear more in accord with those of the case at hand. It is held thus:

**35. If two decisions of this Court appear inconsistent with each other, the High Courts are not to follow one and overlook the other, but should try to reconcile and respect them both** and the only way to do so is to adopt the wise suggestion of Lord Halsbury given in *Quinn v. Leathern*, [1901] A.C. 495 and reiterated by the Privy Council in *Punjab Cooperative Bank Ltd. v. Commr. of Income Tax, Lahore* AIR 1940 PC 230:

"..... every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions, which may be found there, are not intended to be expositions of the whole law, but governed or qualified by the particular facts of the case in which such expressions are to be found."

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13 2025 SCCOnline SC 447

and follow that decision whose facts appear more in accord with those of the case at hand.

*(emphasis added)*

24. Applying the principle enunciated in ***A. P. Electrical Equipment Corporation*** that the High Court must reconcile the two conflicting judgments of the Supreme Court and follow the decision that is more in accord with the facts of the case, in my view, the observations in the judgment in ***G. Gopal*** cannot be followed in the present case. On reconciliation of views expressed in the two judgments, it is seen that there is some harmony in the two judgments so far as the principle of caveator succeeding to the estate of the testator through the testator. In ***G. Gopal*** though 'slight interest' theory is propounded, the judgment ultimately upholds the caveatable interest of Respondents therein because they were likely to succeed to the estate of the testator through the deed of settlement executed by the testator. In ***G. Gopal***, the case did not involve challenge to the title of testator in respect of the bequeathed properties. On the other hand the judgment in ***Krishna Kumar Birla*** is a direct authority on the principle that if the caveator challenges or questions the title of the testator in respect of bequeathed properties, he cannot have any caveatable interest. This in my view would reconcile the views in the two judgments. Here the caveators are not going to succeed to the bequeathed properties through the testator, even if the probate is revoked, which was the case in ***G. Gopal*** where the testator had made a Settlement Deed, which was nullified through the will and therefore if the probate was revoked, the caveator would succeed to the bequeathed properties through the testator on the strength of Settlement made by him. Also, it is seen that the view expressed by the Hon'ble Supreme Court in ***Krishna Kumar Birla*** has



been followed both by the Supreme Court as well as by this Court and Calcutta and Delhi High Courts. Apart from the fact that the judgment in ***Krishna Kumar Birla*** was delivered at a prior point of time, it also contains a more elaborate discussion for holding that a person questioning existence of title of testator is stranger to the probate proceedings. In the present case, the Respondent Nos. 1 to 4 are questioning the title of the testator claiming that she was not the owner of the properties in respect of which she made the Will.

25. The learned Judge has rejected the objection of maintainability of Civil Miscellaneous Application No.616 of 2013 by following the ratio of judgment in ***G. Gopal***. Attention of the learned Judge was apparently not drawn to prior judgment of the Apex Court in ***Kanwarjit Singh Dhillon, Krishna Kumar Birla*** as well as to the subsequent judgment in ***Saroj Agarwalla***.

26. In the present case, Respondent Nos.1 to 4 have clearly questioned title of the testator to make the Will and to bequeath the properties. That issue is clearly outside the jurisdiction of the Probate Court. Therefore, it is difficult to hold that Respondent Nos.1 to 4 have caveatable interest for maintaining application for revocation of probate.

27. Mr. Gorwadkar has sought to contend that the probate needs to be revoked since the same is issued without jurisdiction. Though this contention is sought to be urged by him, the same is not the case of his clients before the Trial Court. He however submits that since the issue goes to the root of the matter, the same can be raised directly before this

Court. The contention is premised on provisions of Section 57 read with Section 213 of the Indian Succession Act, which mandates probate in respect of wills executed within the limits of Ordinary Original Civil Jurisdiction of this Court. It is contended that the Will is executed at Pune and that the properties are located at Satara and that therefore issuance of probate is without jurisdiction and is otherwise superfluous. In support of contention that absence of requirement to secure probate in respect of wills executed outside the limits of ordinary original civil jurisdiction of this Court, reliance is placed on the judgments of this Court in ***Jyoti Jagdish Singhai*** (supra) and ***Kantabai Mahipat Sonavane*** (supra). Mr. Gorwadkar has gone to the extent of contending that there is prohibition on issuance of probate in respect of wills which are not covered by clauses (a) and (b) of Section 57 of Indian Succession Act. The law in this regard is well settled by judgment of this Court in ***Mahesh N. Bhat*** (supra), in which it is held that Section 57 of the Indian Succession Act merely specifies the class of wills of which probate is necessary and it does not mean that probate cannot be granted of other wills. It is further held that for the wills that fall outside the class namely ‘*wills made outside those towns or which relate to immovable properties situated outside the towns or both*’, probate is merely optional. This Court held in paragraph 5 of the judgment as under:

“5. It seems to me clear that all that this section does is to specify the class of Wills of which probate is necessary. That class covers Wills made in one of the specified towns, i.e., the presidency towns; or where the Will in question relates to immovable property within the local limits of the ordinary original civil jurisdiction of the High Courts in those towns. This does not mean that Probate cannot be granted of other Wills that fall outside the class, i.e., Wills made outside those towns, or which relate to immovable property situated outside towns, or both. Thus, a Will made outside Mumbai, and relating to immovable property outside Mumbai does not *compulsorily* require probate.

For such a Will, probate is merely optional. The section does not say that probate of such a Will cannot be granted.”

28. It therefore cannot be concluded that grant of probate is invalid merely because the Will is executed in Pune or immovable properties are situated in Satara.

29. The conspectus of the above discussion is that the Applicants in Civil Miscellaneous Application No.616 of 2013 do not have a caveatable interest since they are seeking revocation of probate essentially by questioning title of the testator in respect of property bequeathed by her. It is also not that the probate prejudices the right of Respondent Nos.1 to 4 on account of it defeating some other line of succession in terms whereof they assert their rights. There is no possibility of Respondent Nos.1 to 4 inheriting the bequeathed property through the testator in the event of revocation of the probate. Their case is that Rajeshwari (testator) herself was never the owner of the bequeathed property and that they are the real owners. Since this plea is raised, there is no question of Respondent Nos.1 to 4 inheriting the properties bequeathed by Rajeshwari, through her, in the event of revocation of the probate. They have already instituted a suit, in which the issue of title can be adjudicated, and which question falls outside the purview of the Probate Court.

30. I am therefore of the view that the Trial Court has erred in rejecting the application filed by the Applicant at Exhibit-52. The Trial Court has committed an error by exercising the jurisdiction with material irregularity by holding that the probate revocation application

is maintainable, warranting interference by this Court in exercise of revisionary jurisdiction under Section 115 of the Code.

31. The Civil Revision Application accordingly succeeds, and I proceed to pass the following order:

- i) Order dated 20 December 2022 passed on Application at Exhibit-52 filed in Miscellaneous Application No.616 of 2013 is set aside.
- ii) Miscellaneous Application No.616 of 2013 filed for revocation of probate of Will of Rajeshwari Pandurang Nagarkar is held to be not maintainable.
- iii) Consequently, Miscellaneous Application No.616 of 2013 is dismissed.

32. Civil Revision Application is **allowed** in above terms. There shall be no order as to costs.

33. In view of disposal of the Civil Revision Application, pending Interim Application does not survive and the same is also accordingly **disposed of**.

(SANDEEP V. MARNE, J.)

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RAJALINGAM  
KATKAM  
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