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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
CHAMBER SUMMONS NO. 27 OF 2015
IN
TESTAMENTARY PETITION NO. 1203 OF 2013
IN
TESTAMENTARY SUIT NO. 1 OF 2014**

Sammeer Sheth	...Applicant
<i>In the matter between</i>	
Jitendra Amritlal Shah	...Deceased
Dr. Mahesh Balsekar & Ors.	...Plaintiffs
<i>Versus</i>	
Sammeer Sheth & Ors.	...Defendants

Mr. Shyam Dewani, *i/b Dewani & Asso., for the Plaintiffs.*
Mr. Shardul Singh, *a/w Mr. Ashish Rao, i/b M/s. M & M Legal*
Ventures, for the Defendants

CORAM: G.S. PATEL, J
DATED: 9th March 2015

PC:-

1. This is a Chamber Summons by Defendant No.1 seeking leave to amend the Affidavit in Support of the Caveat. The 1st Defendant contends that the Caveat and the Affidavit in Support

were filed before a copy of the Petition was served on him. Now that the Petition has been served with all its annexures, it is necessary, Mr. Shardul Singh, learned Advocate for Defendant No. 1 says, that the amendment be permitted in order that the 1st Defendant can fully put forward his case.

2. I have heard Mr. Singh and Mr. Dewani, learned Advocate for the Plaintiffs, and considered the draft amendments. Although Mr. Dewani is correct in his submission that the amendment seeks to introduce assertions as to the testator's title to certain properties, matters that lie completely beyond the remit of the Probate Court, it is not possible at this stage to segregate individual statements and assertions in the draft amendments. It is sufficient to note that in a testamentary action seeking probate, the 1st Defendant cannot be permitted to raise for determination questions of title to any property, movable or immovable, or whether or not the testator had any right, title and interest in any of it. These are matters that cannot be decided in Probate proceedings and for which the 1st Defendant must file a substantive suit, if not already done. The limited purpose of the amendment would be to facilitate the 1st Defendant to more accurately formulate his challenge to the testamentary writing and to its due execution, and nothing further.

3. With these observations, the Chamber Summons is made absolute in terms of prayer clause (a). Amendment to be carried out on or before 23rd March 2015. A copy of the amended Affidavit shall be served on the advocate for the Plaintiff on or before that date.

4. Suit to be listed for framing issues on 30th March 2015.

(G. S. PATEL, J.)