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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
CHAMBER SUMMONS NO. 85 OF 2016
IN
TESTAMENTARY SUIT NO. 10 OF 2010
IN
TESTAMENTARY PETITION NO. 732 OF 2008**

The State of Maharashtra	... Applicant
<i>In the matter between</i>	
Mr. Mukesh Vasantkumar Chandan	... Plaintiff
<i>Versus</i>	
Kalpana alias Darshana H. Ruparel and Another	... Defendants

Mr. Prakash Shah, i/b Prakash and Company for the Plaintiff.
Mr. U.S. Upadhyay, Assistant Government Pleader for the Applicant.

CORAM: G.S. PATEL, J
DATED: 15th November 2016

PC:-

1. This Chamber Summons deserves to be dismissed. It is, in my view, thoroughly misconceived and possibly mischievous. The Applicant is the State of Maharashtra and it once again makes an application to take custody of the original Will for the purposes of forensic examination. I have found the State Government to selectively make such applications though I have, with one narrow

exception, never permitted the original Will to be taken out of the custody of the Testamentary Department of this Court. I have, instead, always permitted inspection and examination of the original Will in the premises of the High Court.

2. An identical application was made earlier to Mrs. Justice Roshan Dalvi in Chamber Summons (L) No. 110 of 2014. By an order dated 17th September 2014 she rejected that application. In paragraph 3 of the order Mrs. Dalvi J said:

“3. An application is made on his behalf by the State of Maharashtra for the custody of the Will. The custody of the Will cannot be given to any party pending the testamentary suit. However the Applicant, State of Maharashtra, shall be entitled to see the original Will in the office of the Prothonotary and Senior Master of this Court. The State of Maharashtra shall also be entitled to have any handwriting expert attend before the Prothonotary and Senior Master of this Court for taking inspection of the Will and giving any opinion about the signatures on the Will. The Will shall however not be taken outside the office of the Prothonotary and Senior Master of this Court.”

3. This has also been my own consistent and invariable practice throughout, except in one solitary case. I do not allow the original Will to be taken out of the Court. The reasons are obvious — there is the question of safekeeping and security, and we have enough experience of original documents being taken into custody by one state agency or the other, only to be reported lost or missing or

damaged when needed at a trial. Further, original Wills are maintained in our registry in perpetuity. Most of all, testamentary actions in regard to Wills speak to a particular document and it is therefore all the more necessary that the physical artefact of the document in question be preserved and kept.

4. What is surprising in the present application is that there is no mention in the Affidavit in Support of Mrs. Justice Roshan Dalvi's order. It is not annexed. It is not even referenced or mentioned in the Affidavit. Instead, what is annexed is a copy of my own order in some entirely different matter where, on finding that a prayer was carefully worded for leave to the State Government to examine and inspect the Will in the Testamentary Department, I allowed the Chamber Summons. That order does not help the Government at all, and is clearly an attempt at misdirection.

5. There is absolutely no call to allow this Chamber Summons. If the State Government wishes to apply for leave to inspect the Will in the premises of the High Court it is at liberty to make a fresh application for that purpose with a proper supporting Affidavit. By this, I mean one that discloses all necessary facts.

6. The present Chamber Summons is dismissed with costs.

(G. S. PATEL, J.)