

SHEPHALI

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
TESTAMENTARY SUIT NO. 87 OF 2011
IN
TESTAMENTARY PETITION NO. 646 OF 2010
WITH
CHAMER SUMMONS NO. 122 OF 2016**

Pujan Jayant Shah & Anr. ...Plaintiffs
Versus
Rakesh B. Sharma ...Defendants

**WITH
TESTAMENTARY SUIT NO. 39 OF 2006
IN
TESTAMENTARY PETITION NO. 899 OF 2004**

Rakesh B. Sharma ...Plaintiffs
Versus
Pujan Jayant Shah & Anr. ...Defendants

Mr. Kishore Jain, i/b Shweta Jain, for the Plaintiffs.
Mr. Ashok Upadhyay, for the Applicant in CST/122/16.
Mr. D. R. Mishra, for the Defendant No. 2.

CORAM: G.S. PATEL, J
DATED: 14th October 2016

PC:-

1. The Applicant wishes to be impleaded as a defendant to this contested action for Letters of Administration with Will annexed. The basis of this application for impleadment is that the Applicant took certain property from the deceased, Krishanlal Trikamdas Shah under a Deed of Gift made by the deceased *inter vivos*.
2. The Chamber Summons is not maintainable. It is a well-settled position in law that questions of title are neither determined nor decided in probate or testamentary proceedings such as this, which are concerned only with proof of testamentary instrument in its solemn form.
3. All contentions of the Applicant will be specifically kept open for being canvassed in appropriate proceedings. According to him none have been challenged his Deed of Gift and which is his document of title. That title cannot, therefore, be affected by either the grant or refusal of Letters of Administration with Will annexed in the present proceeding.
4. At this stage, Mr. Upadhyay for the Applicant seeks leave to withdraw the Chamber Summons with liberty to adopt appropriate proceeding in regard to the title of the property in question and the Deed of Gift. Leave granted with liberty as prayed.
5. The Chamber Summons is disposed of in these terms, with no order as to costs.

6. An Affidavit in Reply has been served. It is to be filed in the Registry.

(G. S. PATEL, J.)