

SHEPHALI

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 128 OF 2015
IN
TESTAMENTARY PETITION NO. 272 OF 2003**

Mr. Ajay Janeshwar Garg	...Petitioner
<i>Versus</i>	
Samraat K. Malhotra & 2 Ors. and Sushila B. Saklani	...Respondents

Mr. P. Shinde, *i/b B. Singh, for the Applicant.*
Mr. B. G. Saraf, *i/b Sanjay Mishra, for the Respondents.*

CORAM: G.S. PATEL, J
DATED: 21st June 2016

PC:-

1. The Motion seeks reliefs in respect of various properties, movable and immovable. Mr. Saraf for the Respondents states that the Motion is not maintainable in view of the decision of this Court in *Rupali Mehta v Smt. Tina Narinder Sain Mehta*,¹ *Ramchandra Ganpatrao Hande alias Handege v Vithalrao Hande and Ors.*,² and *Manek Dara Sukhadwalla v Shernaz Faroukh Lawyer*.³ In my view,

1 2006 (6) Bom.C.R. 778

2 2011 (4) Bom.C.R 326

3 Appeal (L) No. 7 of 2014 in Notice of Motion No. 138 of 2012 in Testamentary Suit No. 29 of 2012 in Probate Petition No. 341 of 2012, decided on 8th August 2014.

this is correct. As the Division Bench explains in *Hande*, the ‘subject matter’ of a testamentary proceeding is not title to any particular property but is the testamentary instrument in question, or the matter of representation and administration.

2. Thus, this Notice of Motion is thoroughly misconceived. Liberty to the Applicants to adopt suitable proceedings. All contentions in that behalf are expressly kept open.

3. The Notice of Motion is disposed of in these terms with no order as to costs.

(G. S. PATEL, J.)