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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY & INTESTATE JURISDICTION

NOTICE OF MOTION (LODGING) NO.254 OF 2018
IN
TESTAMENTARY PETITION NO.816 OF 2015

Late Chanchalben D. Gala – Shah	...Deceased
And	
Jayesh Shah	...Applicant Ori.Petitioner
Kantilal D. Shah	...Third Party Applicant

Dr.Santosh D. Raje I/b Mr.Rajiv A. Jadhav for the Original Petitioner.

Mr.Kantilal D. Shah – The Third Party is present.

CORAM : R.D. DHANUKA, J.
DATE : 29TH NOVEMBER, 2018.

P.C. :-

1. By this notice of motion, the applicant (original petitioner) seeks to impugn the order dated 11th October, 2018 passed by the learned Prothonotary & Senior Master allowing the application filed by the third party applicant – Mr.Kantilal D. Shah praying for certified copy of the records and proceedings in Testamentary Petition No.816 of 2015 including Letters of Administration.
2. Admittedly the applicant before the learned Prothonotary & Senior Master did not fall under class – I or II legal heirs of the

deceased late Chanchalben Dharshi Gala – Shah. A perusal of the application filed by the third party applicant before the learned Prothonotary & Senior Master indicates that the said applicant claims to be the step son of the deceased and prayed for copy of that documents, pleadings and copy of the Letters of Administration dated 16th January, 2018 on the ground that he wants to challenge issuance of the Letters of Administration dated 16th January, 2018. It is not in dispute that till date, the applicant herein has not filed any suit for recovery of possession of the properties, if any, against the applicant before the learned Prothonotary & Senior Master.

3. This application filed by the original petitioner is opposed by the original applicant on the ground that the Letters of Administration could not have been granted by this Court in favour of the original petitioner and also on the ground that in the said Letters of Administration, property allegedly belonged to the original applicant are sought to be recovered.

4. In catena of decision of the Hon'ble Supreme Court and this Court, it has been held that the Testamentary Court does not have powers to decide the title in respect of the property. I am thus not inclined to accept the submissions made by the original applicant. The original applicant not falling under Class – I or II and it being not the case of the original applicant that he had caveatable interest and

was not served with citation, the learned Prothonotary & Senior Master could not have allowed the said application filed by the original applicant.

5. It is however, made clear that if any suit is filed by the original petitioner based on such Letters of Administration and such Letters of Administration is relied upon by the applicant herein, the original applicant may take recourse to the provisions of the Code of Civil Procedure, 1908 for seeking inspection and copy thereof.

6. I therefore, pass the following order :-

- a). The impugned order dated 11th October, 2018 passed by the learned Prothonotary & Senior Master is set aside with aforesaid clarification.
- b). The notice of motion is allowed in aforesaid terms.
- c). There shall be no order as to costs.

(R.D. DHANUKA, J.)