

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION**

**INTERIM APPLICATION NO. 2542 OF 2022
IN
TESTAMENTARY SUIT NO. 34 OF 2011**

State of Maharashtra through Assistant
Police Inspector, Kashmirira Police Station

... Applicant
(No party in main matter)

In the matter between

Gautam Ratan Sonawane

... Plaintiff

Versus

Surendra Karsonlal Dalal

... Defendant

**WITH
INTERIM APPLICATION NO. 1626 OF 2022
IN
TESTAMENTARY SUIT NO. 172 OF 2014**

State of Maharashtra through Assistant
Police Inspector, Kashmirira Police Station

... Applicant
(No party in main matter)

In the matter between

Tushar Bhagwan Khaire

... Plaintiff

Versus

Kunjilata Rajendra Shah & Anr.

... Defendants

E.A. Sasi a/w Bhagyashri Mangale for the Plaintiff in TS/15/2011 and TS/172/2014 and for the Defendant Nos.1 and 2 in TP/890/2010 and TP/1180/2014.

Mr. Gaurav Chaubey i/b R.S. Chaubey for the Plaintiff-Tushar Bhagwan Khaire in all Interim Applications and matters.

Mr. DR.. Mishra for the Plaintiff in TS/34/2011 and Defendant in TS/172/2014.

Mr. Himanshu B. Takke, A.G.P for the State of Maharashtra.

CORAM : R.I. CHAGLA, J.
DATED : 30th SEPTEMBER, 2022.

ORDER :

1 Heard the learned Counsel for the parties. By the Interim Application No.2542 of 2022, the Applicant has sought directions to the Prothonotary and Senior Master of this Court to permit the Chief Government Handwriting Examiner of C.I.D. Maharashtra State, Pune or his subordinate officer to take photographs of original Will dated 24.12.2004 of the deceased Ashrumati Bhogilal Dalal for examination, comparison and also for appropriate report on the said document.

2 By an order dated 20.10.2021, an Interim Application No.485 of 2021 filed by the present Applicant had been considered. By that Interim Application relief was sought for direction to the Chief Government Handwriting Examiner, C.I.D. Maharashtra State, Pune, or his subordinate Officer to be permitted to examine and compare the original Wills of the deceased Ashrumati Bhogilal Dalal which was in possession of the Prothonotary and Senior Master of this Court. This was

in light of criminal proceedings which was stated to be pending and which complaint was under investigation. A specific prayer had been made for handing over original two Wills dated 15.12.2005 and 24.12.2005 of the deceased by the Prothonotary and Senior Master of this Court to the Chief Government Handwriting Examiner, C.I.D. Maharashtra State, Pune, for examination, comparison and also for appropriate report on the said documents, which was not granted by this Court. In fact the learned A.G.P. has pressed for only prayer clause (b) of the Interim Application. This Court had granted prayer clause (b) of the Interim Application No.485 of 2021 and permitted the Chief Government Handwriting Examiner, C.I.D. Maharashtra State, Pune, to examine and compare the original Wills dated 15.12.2005 and 24.12.2005 of the deceased Ashrumati Bhogilal Dalal in the office of the Prothonotary and Senior Master of this Court. The Applicant was to give 48 hours prior notice to the office of the Prothonotary and Senior Master as well as parties to these proceedings.

3 Interim Application No.485 of 2021 and Interim Application No. 500 of 2021 were accordingly disposed of in the above terms.

4 The relief now sought for in the present Interim Application is vehemently opposed by the learned Counsel for the Plaintiff in

Testamentary Suit No.172 of 2014 who has propounded another Will is claimed to have been executed by the deceased.

5 Considering the prayer which had been granted vide order dated 20.10.2021 as well as other prayer which had been initially sought in the Interim Application and which was thereafter not pressed, the relief now sought for cannot be granted considering that appropriate opportunity had been given to the Chief Government Handwriting Examiner, C.I.D. Maharashtra State, Pune, for examining and comparing original Wills dated 15.12.2005 and 24.12.2005 of the deceased in the office of the Prothonotary and Senior Master of this Court. Further, this Court being the Testamentary Court is to decide whether the Will is a forgery or genuine. It has been held by this Court vide order dated 13.07.2018 in State of Maharashtra through Investigation Officer Bandra Police Station, Bandra (West), Mumbai, in the matter between *Hoshang M. Baria vs. Furrokh B. Dhondi*, that the Testamentary Court will not permit a situation where because of some parallel complaint filed, the entire integrity of the trial and evidence before the Testamentary Court is compromised. Accordingly, the relief sought for in the present Interim Application for permitting the Applicant to take photographs of the original Will dated 24.12.2004 of the deceased cannot be granted. Accordingly, Interim Application is disposed of in the above terms.

6 In view of the findings in Interim Application No.2542 of 2022, Interim Application No.1626 of 2022 has become infructuous and is accordingly disposed of.

Digitally signed
by WAISHALI
SUSHIL
WAGHMARE
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(R.I. CHAGLA, J.)