

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD**

CIVIL APPLICATION NO. 2468 OF 2013
IN
WRIT PETITION NO. 985 OF 2013

Jawaharlal Premraj Mutha
VERSUS
Motilal Ritakaran Mutha, deceased through L.Rs.
1A Tarabai Shantilal Mutha & Ors.

.....
Mr S. S. Kulkarni, Advocate for applicants
Mr N. K. Kakade, Advocate for respondent No. 2
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CORAM : **S. V. GANGAPURWALA, J.**
DATE : **23RD OCTOBER, 2015.**

PER COURT:

. Mr Kulkarni, learned Counsel submits that the application was in respect of probate, as such Section 384 would not be applicable. This Court while passing the order dt. 5th February, 2013 had considered the proceedings to be u/s 372 of the Indian Succession Act and thereby invoked Section 384(3) of the Indian Successions Act. The said provision would not be applicable and as such the writ petition would only be maintainable and same be tried as a writ petition.

2. In case the proceedings are probate proceedings, certainly the arguments of Mr. Kulkarni, learned Counsel for the applicant, that Section 384(3) would not apply, is legal and proper. However, order

under challenge is a final order passed by trial Court. Even in such a case, if the Court subordinate to this Court passed any order which finally determines the proceedings then in that case, the revision would also be tenable u/s 115 of the Code of Civil Procedure. In light of that, the present civil application is disposed of.

[S. V. GANGAPURWALA, J.]

sgp