

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.446 OF 2015
IN
WRIT PETITION (ST) NO.3423 OF 2015**

**Rajaram Sitaram Patil : Applicant.
Versus
Laxmibai Bandhu Patil and ors. : Respondents.**

**Shri. Anilkumar Patil with Ms. Nikita R Sawant I/by Shri.Sandeep S Salunkhe for the Applicant – Original Respondent No.1.
Shri. K S Deval with Shri. Roshan Tanna i/by Shri. J M Joshi for the Respondent Nos. 1 and 2 – original Petitioners.**

**CORAM : R. M. SAVANT, J.
DATE : 20th February 2015**

P.C.

- 1 Not on board. Mentioned for urgent reliefs.
- 2 At the outset the learned counsel appearing for the Applicant/Original Respondent No.1 seeks amendment in the Affidavit in Support of the Civil Application so as to delete the words “studied up to” from the 2nd line to the word “and” in the 3rd line in paragraph 2 of the said Affidavit. Leave granted. Amendment to be carried out forthwith.
- 3 The above Civil Application has been filed by the Applicant/Original Respondent No.1 for the following reliefs :-

“(V) That the consent given by the son of Respondent no.3 Mr. Paresh Jadhav be withdrawn as he is not a party to the petition and suit, and the will in suit is challenged against this Applicant.

(VI) That the said order Dt.17/2/15 passed in writ petition no.3423/15 pleased to may be recalled and appropriate order on merits may pleased to be passed.

(VII) That till the final hearing of this application the report of Expert Dr Shailesh Chandajker if filed may not be read in evidence and same may not be taken on record.”

4 The above Petition was filed challenging the order dated 27/1/2015 passed by the learned Joint Civil Judge, Junior Division, Kalyan rejecting the Application (Exhibit 213) which had been filed by the Plaintiffs i.e. the original Petitioners seeking permission from the Court that their witness Shri. Shailesh Chandaskar may be allowed to inspect the thumb impression on the revenue records and also obtain photographs of those disputed and contemporary thumb impressions.

5 The above Petition came to be disposed of by an order passed on 17/02/2015. Whilst disposing of the above Petition, the directions as contained in Paragraph 1(i) to (iv) of the order dated 17/02/2015 were issued on the consensus which was arrived at between the parties recording of which in the impugned order is to the following effect :-

“In the course of the hearing of the above Petition, the parties have arrived at a consensus on account of the instructions given to Shri A.K.Patil, learned counsel appearing for the Respondents No.1 and 2 by the son of the Defendant No.2 Mr. Paresh Jadhav who is personally present in the Court and hence the following directions are issued :-

1) The application Exh.213 is allowed to the aforesaid extent -

i) That the Plaintiffs along with his witness would be allowed to take inspection of the alleged Will dated 24th November, 1968 of Kalu Padu Dhone as also the thumb impressions on the contemporary revenue records in presence of a Court Officer and the Learned Counsel for the Defendants.

ii) The said witness Mr. Shailesh Chandaskar would be allowed to take four photographs of each of the thumb impression on the alleged Will as also the contemporary revenue records at the same time. The said process to be completed on or before 20th February, 2015. If the aforesaid process is not completed by 20th February, 2015, no further time would be granted and the Plaintiffs would then have to proceed on the basis of whatever material is on record.

iii) The passing of the impugned order should not be construed as any concession made by the parties on merits or any expression of opinion on merits by this Court. The suit would undoubtedly be decided on merits and in accordance with law.

iv) Since the suit has already been expedited as directed to dispose of by 31st April, 2015, the Trial Court to endeavour to dispose of the suit within the said stipulated period. The Learned Counsel appearing for the Defendants Mr. Patil assures the Court that the Defendants would co-operate in the aforesaid process and see to it that the same is completed within the time stipulated by this order. It is clarified that no further application on the said aspect would be filed or entertained by the Trial Court. The Petition to accordingly stand disposed of in the aforesaid terms.”

The said consensus was recorded after Shri A K Patil the learned counsel appearing on behalf of the Respondent Nos.1 and 2 in the Petition had taken instructions from the son of the Respondent No.2 i.e. the original Defendant No.2 one Shri. Paresh Jadhav who was personally present in Court. The review of the said order dated 17/02/2015 is sought on the ground mentioned in Paragraph 5 of the above Civil Application. The said ground is to the effect that the said Shri. Paresh Jadhav is not a party to the suit as also the above Writ Petition. It is further stated that he is not conversant with English language and he did not understand the meaning of the word consent or consensus and therefore he simply said Yes to the suggestion which was made by the learned counsel Shri A K Patil. The said ground is also supported by the affidavit filed by the said Shri Paresh Jadhav in support of the Civil Application. The consent having been given by the said Shri. Paresh Jadhav without understanding its importance is therefore sought to be withdrawn by way of the above Civil Application.

6 Heard the learned counsel for the parties. Though the consent given by the said Shri. Paresh Jadhav to the learned counsel Shri A K Patil was in open Court, however, having regard to the ground mentioned in the above Civil Application, and especially in Paragraph 5 which ground has been supported by the Affidavit filed by Shri. Paresh Jadhav in support of the above Civil Application, and to avoid any embarrassment to the learned counsel

appearing for the Respondent Nos.1 and 2, the order dated 17/02/2015 passed in the above Writ Petition, which has been passed on the basis of the consensus is recalled/reviewed, and the said order dated 17/02/2015 is accordingly set aside and the above Writ Petition is restored to file for being heard on merits. The above Civil Application is accordingly disposed of.

[R.M.SAVANT, J]