

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.4582 OF 2014

Sou. Chhaya W/o Prakshrao Boxey & Anr.

-vs-

Manohar S/o Narayan Joshi

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri A. A. Pannase, Advocate for petitioner.
Shri Mohan Sudame, Advocate for respondent.

CORAM : A.S.CHANDURKAR J.

DATE : MARCH 04, 2015.

This writ petition has been filed by the original defendant objecting to framing of additional issue at Issue No.2A by the trial Court.

The respondent had filed suit for declaration that the Will deeds dated 02/02/2001 and 14/02/2001 executed by Smt. Usha Narayan Joshi were null and void. In the plaint in paragraph 3, there was a reference to the registered Will dated 26/09/1979 executed by the husband of said Usha. In the written statement, execution of said Will was denied and in the specific pleadings, a plea was taken that a false and fabricated Will was got executed from said Narayan. The plaintiff moved an application vide Exhibit-36 for framing additional issue on the ground that a plea was taken by the defendants that said Will dated 26/09/1979 was fraudulent. The trial Court by order dated 03/04/2014 framed Issue No.2 as proposed and it was numbered as Issue No.2A.

The learned counsel for the petitioners submitted that as the plaintiff had not sought any declaration as regards validity of Will dated 26/09/1979, additional issue ought not to have been framed. It was further submitted that without obtaining the say of defendant No.2 aforesaid additional issue came to be framed by putting the burden on the defendants to prove the same. He also submitted that though application for review was also moved, same was also rejected.

The learned counsel for the respondent submitted that the issue as framed was on the basis of specific pleadings in response to plaint averments. He submitted that defendant No.1 had not objected to framing of said issue. Relying upon judgment of learned Single Judge in ***Shraddha Associates, Pune & Anr. Vs. St. Patrick's Town Co-operative Housing Society Ltd. & Ors. 2003(2) Mh.L.J. 219***, it was submitted that the parties were not required to be heard as a matter of right before recasting of issues. He also submitted that considering the interlocutory nature of the order, no case for interference was made out and in that regard he relied upon ***2014(2) ALL MR 550 Walchandnagar Industries Limited Vs. Indraprashtha Developers & Ors.***

The pleadings of the parties indicate that in the plaint, it is a specific case set up by the plaintiffs that on 26/09/1979 Shri Narayan Joshi had executed a registered Will in which certain properties were bequeathed in favour of his wife. In reply to paragraph 3 of the plaint, said Will was denied and it was specifically pleaded that said false and

fabricated Will was got executed from Narayanrao. It is therefore clear from the pleadings of the parties that the defendants had challenged the validity of registered Will dated 26/09/1979. The additional issue as framed as regards whether the defendants had proved the said Will to be executed by practicing fraud, can be said to have arisen from respective pleadings of the parties. The parties were at issue on the aspect of validity of registered Will dated 26/09/1979. It is to be noted that defendant No.1 did not object to framing of said additional issue and it is only defendant No.2 who is aggrieved by framing of said additional issue.

Considering the observations as made in *Shraddha Associates* (supra), no party can claim as a matter of right for being heard in the matter of framing or reframing of issues. Moreover, from the pleadings of the respective parties, it is clear that the additional issue as framed had arisen for determination. Hence considering the observations as made in *Walchandagar Industries Limited* (supra) and nature of interlocutory order which has been passed on the basis of pleadings of the parties, no case for interference in writ jurisdiction has been made out.

The Writ Petition is therefore dismissed with no order as to costs.

JUDGE