IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8426 OF 2015

Shri Arvind Damodar Gaidhani Petitioner
Vs
Smt. Shubhangi Nandkishor Gaidhani and Ors. .. Respondents

Mr. Girish Agarwal, Advocate for Petitioner.
Mr. Roshan Tanna, Advocate for Respondents no.1 to 3.

CORAM : R.G.KETKAR,J.
DATE : 23/02/2016

PC:

1. Heard Mr. Girish Agrawal, learned counsel for the petitioner and Mr. Roshan Tanna, learned counsel for respondents no. 1 to 3 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 18.4.2015 passed by the learned District Judge-6, Nashik below Exh.155 in Civil Appeal no.1 of 2007. By that order, the learned District Judge rejected the application taken out by the petitioner, hereinafter referred to as defendant no.2, seeking permission to prosecute the appeal as per the Will executed by appellant no.1/defendant no.1 in favour of defendant no.2.

3. Mr. Agrawal submitted that defendant no.1 is father of defendant no.2. Respondent no.1 is daughter-in-law of defendant no.1. Respondents no.2 and 3 are children of respondent no.1. They instituted suit for partition and possession. Defendants no.

1 and 2 filed Written Statement, inter alia, contending that the properties described in Schedule A and D are separate properties of defendant no.1. The learned trial Judge, however, held otherwise and decreed the suit. Aggrieved by that decision, defendants no.1 and 2 have preferred Appeal. Pending the Appeal, defendant no.1 expired on 17.3.2014. Defendant no.2 filed application Exh.155 giving the details of legal heirs left by defendant no.1. In paragraph 2, it is asserted that defendant no.1 had executed Will and accordingly the heirs became owners by succession. Along with the application, true copy of the Will was annexed. As per the Will, rights are created in favour of the parties and permission may be granted to prosecute the appeal and protect their interest. Mr. Agarwal submitted that defendant no.2 should be allowed to raise contentions based on the Will of defendant no.1.

4. On the other hand, Mr. Tanna submitted that the application is totally vague. Arguments which are advanced in the petition were not reflected in the application.

5. In view thereof, Mr. Agrawal seeks permission to withdraw application Exh.155 with liberty to file fresh application giving all the details.

6. In view thereof, on the motion made by Mr. Agrawal, Petition is allowed to be withdrawn with liberty as prayed for. All

contentions of respondents 1 to 3 are expressly kept open. Order accordingly.

(R.G.KETKAR, J.)