

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (St.) No. 77 OF 2017

Smt. Vimal Manohar Bhalerao & Ors. ... Petitioners
Vs.
Smt. Surekha Kashinath Pagar & Ors. ... Respondents

Mr. P.S. Dani, Senior Advocate i/b. Mr. Nikhil M. Pujari, Advocate for the petitioners.

Mr. Sanjay P. Shinde, Advocate for respondent No. 1.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **20th July, 2017.**

P.C.:

Rule. Rule made returnable forthwith. By consent, the Writ Petition is heard finally and decided at the stage of admission.

2. This Writ Petition is directed against the order dated 3rd December, 2016 below Exhibit 147 in Regular Civil Suit No. 138 of 2003 passed by the learned Joint Civil Judge Junior Division, Chandwad, District Nashik. The witness Dr. Ajit Kunthekar has issued the certificate of fitness in favour of Mr. Manohar Bhalerao, who has executed the will on 14th September, 2002. The proof of the will is the issue before the trial Court. An Application made for issuing witness summons to Dr. Ajit Kunthekar was rejected by the trial Court on the ground that the summons cannot be sent because

Dr. Ajit Kunthekar is not a Government servant and it is on the ground that the suit is pending since 2003 and it is to be expedited.

3. The learned senior counsel for the petitioners submitted that the order passed by the trial Court is to be set aside, as the examination of defence is necessary and the order is illegal.

4. The learned counsel for respondent No. 1 while opposing the Application, has submitted that the suit is pending since 2003 and it is expedited. The learned counsel further submitted that under Order 16 Rule 1, it is necessary for the parties to give list of the witnesses at the time of filing plaint or alongwith written statement, however, the said list is not given by the petitioners/defendants at the time of filing written statement or thereafter and no reason is given in the Application for not disclosing the name of the witness earlier.

5. Perused the Application for issuing witness summons and also the reply given by the plaintiffs/respondents opposing the said Application. No such objection was raised under Order 16(1) of Code of Civil Procedure. However, under Order 16 Rule 3, the Court has power to allow the said witness even though his name is not

given in the witness list. On perusal of the order, the reason given by the learned trial Judge that such witness summons cannot be sent to a doctor who is not a Government servant, is incorrect. The Court has every power to call the witness who is required to prove the facts and the documents in the suit. Hence, the order dated 3rd December, 2016 below Exhibit 147 in Regular Civil Suit No. 138 of 2003 passed by the learned Joint Civil Judge Junior Division, Chandwad, District Nashik is set aside. The Application for issuing witness summons is allowed.

6. Rule is made absolute in above terms.

(MRIDULA BHATKAR, J.)