

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

WRIT PETITION NO. 2850 OF 2016

Shri Suhas Mahadev Gadgil

..Petitioner.

Vs

Shri Laxman Govind Panse and
Ors.

.. Respondents

Mr.Abhijit P. Kulkarni , Advocate for Petitioner.

Ms.Manjiri S. Parasnis , Advocate for Respondent no.1.

**CORAM : R.G.KETKAR,J.
DATE : 02/02/2017**

PC:

1. Heard Mr. Abhijit Kulkarni, learned counsel for the petitioner and Ms.Manjiri Parasnis, learned counsel for respondent no.1.
2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 17.9.2014 passed by the learned 2nd Jt. Civil Judge, Sr. Dn Pune below Exhibit 161 in Misc. Application No. 446 of 2002. By that order, the learned trial Judge partly allowed the application and framed point no.3, namely, whether the application is maintainable on behalf of the applicant or that he has locus-standi to file the application. The learned trial Judge deleted point no.2. Ms. Parasnis has tendered photocopy of the order dated 13.10.2016 passed by the learned trial judge in Misc. Application No. 446 of 2002. The same is taken on record and marked 'X' for identification. She submitted that the Misc. Application filed by

the first respondent herein is allowed by the trial Court and probate of Will of late Govind Bhaskar Panse dated 23.2.1995 is revoked. The petitioner herein is directed to deposit original probate in the Court. The learned trial Judge also restored original probate application M.A. No.718 of 1994 on its original file for disposal of the same in accordance with law.

3. Learned counsel for the parties jointly submitted that in view of this development, this Petition is rendered infructuous. Mr. Kulkarni states that the petitioner intends to challenge the order passed by the trial Court on 13.10.2016. He, therefore, submitted that liberty may be reserved in terms of Section 105(1) of C.P.C.

4. Ms. Parasnis submits that all contentions of the first respondent may be kept open.

5. In view thereof, Petition is disposed of as infructuous. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C. All contentions of respondent no.1 in that regard are expressly kept open.

(R.G.KETKAR, J.)