

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9821 OF 2017

SUDHA ANANTRAO HARWALKAR THROUGH GPA HOLDER A A JOSHI
VERSUS
PRABAKAR NARAYAN JOSHI DIED LRS RAJEMDRAPRASAD
PRABHAKAR JOSHI AND OTHERS

...
Advocate for Petitioner : Mr. Jahagirdar Virendra V
Advocate for Respondents : Mr. P.N. Sonpethkar
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CORAM : V. K. JADHAV, J.
DATED : 7th FEBRUARY, 2018

PER COURT:-

1. By consent of parties, heard finally at admission stage.
2. Being aggrieved by the order dated 19.4.2017 passed by the learned Civil Judge, Senior Division, Aurangabad below Exh.81 in MARJI No. 368 of 2009, the original respondent No.1 preferred this writ petition.
3. The respondent Nos. 1 (a), (b) and (c) filed MARJI No. 368 of 2009 for revocation of letter of probate obtained by the present petitioner. It is the case of the respondents that the present petitioner has obtained the said probate by playing fraud. According to the present petitioner-original respondent No.1 will deed dated 24.12.1990 is the last will deed of testator and the same is only valid

will. In the light of rival pleadings of the parties, the trial court framed issues wherein the burden is cast on the present petitioner that will deed dated 24.12.1990 is the last will deed of the testator and the same is only valid will. Pending the said proceeding, the petitioner herein has filed the said application Exh.81 seeking permission to lead secondary evidence. It has been contended in the application that during renovation and colouring of the house, the original will deed and the relevant documents have been lost. The present respondents have strongly resisted the said application by filing say at Exh.82. The trial court has rejected the said application. Hence, this writ petition.

4. Learned counsel for the petitioners submits that alongwith application Exh.81, inadvertently the petitioner has not filed copies of the documents for which permission sought to lead the secondary evidence. Learned counsel submits that even though the copy of will deed and affidavit in original are not placed on record by the respondents herein before the trial court, in the impugned order, the trial court has made observations to that effect. Learned counsel submits that the petitioner-original respondent No.1 is ready to file documents before the trial court and the trial court be directed to decide application Exh.81 afresh.

5. Learned counsel for the respondents-original petitioners submits that application Exh.81 is vague. There is no reference in para 5 of the application as to for which document the petitioner herein is seeking permission to lead secondary evidence. Learned counsel submits that even if the permission is granted, petitioner herein to file document before the trial court, as document for which the permission to lead secondary evidence is sought and the same should be restricted to the extent of copy of will deed and original affidavit.

6. On careful perusal of application Exh.81, it appears that the application is vague and from the contents of the said application, it is not clear as to for which document the permission is sought to lead secondary evidence. Further, it appears from the impugned order that the trial court has rejected the said application mainly on the ground that the document for which the permission to lead secondary evidence is sought is not placed on record. In view of above, it would be just and appropriate, if the petitioner is directed to file application afresh before the trial court seeking permission to lead secondary evidence and the trial court may decide the said application afresh on its own merits. Hence, I proceed to pass the following order:-

O R D E R

- I. Writ petition is hereby partly allowed. No costs.
- II. The impugned order dated 19.04.2017 passed by the Civil Judge, Senior Division, Aurangabad below Exh.81 in MARJI No. 368 of 2009 is hereby quashed and set aside. The application Exh.81 is hereby filed.
- III. The petitioner-original respondent No.1 is at liberty to file an application seeking permission to lead secondary evidence with supporting documents and the trial court is directed to decide the said application afresh on its own merits.
- IV. The parties are at liberty to file application before the trial court for expeditious hearing of the suit and the trial court may consider the same.
- V. Writ petition is disposed of accordingly.

(V. K. JADHAV, J.)