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

**CIVIL REVISION APPLICATION NO. 236 OF 2017**

Rakesh Motilal Sharma and anr ... Petitioners

V/s.

Jalinder Sopan Nimhan  
and others ... Respondents

Mr. Shriniwas Sudhir Patwardhan, for the Petitioner.  
Mr. Ravi G. Shinde i/by Niranjan A. Mogre, for the  
Respondent Nos 1 & 2.

**CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.**

**DATE : 20<sup>th</sup> MARCH, 2018.**

**P.C. :**

1] Heard learned counsel for the Applicant and learned counsel for the respondents.

2] By this Application filed under Section 115 of the Code of Civil Procedure, the applicant is challenging the order dated 25.01.2017, passed by Civil Judge Junior Division, Pune, in R.C.S.No.2030 of 2014, thereby holding that the Civil Court has jurisdiction to entertain and try the present suit.

3] The petitioners are the original defendant Nos. 1 & 2. The

suit was filed by respondent, claiming the relief of declaration that the will dated 20.8.2006 is void ad-initio. The petitioners have further sought the relief of declaration that the plaintiff and defendant Nos. 3 to 8 are the owners and possessors of the suit property and for the consequential relief of injunction, restraining defendant Nos.1 and 2, who are the present petitioners, from causing obstruction to their possession in the suit property and for not creating third party interest therein.

4] Petitioners-herein, on their appearance, filed the application at Exh.26 contending that as the respondent Nos.1 & 2 are challenging the will executed by late Savitribai during her life time, the said relief cannot be sought in the Civil Court, but it should be sought in the Probate Court and therefore, the issue relating to the jurisdiction of the Court be decided as preliminary issue.

5] The trial Court has decided the said issue as preliminary issue and thereafter considering the relief, as claimed in the suit, has held that the Civil Court has jurisdiction to entertain the suit.

6] The perusal of the order passed by the trial Court clearly goes to show that the trial Court has properly considered that the suit is filed by the respondents claiming to be the owners of the suit

property along with defendant Nos. 3 to 8 and also for consequential and incidental reliefs on the ground that the Will deed executed by late Savitribai Nimhan is not valid, and therefore, the Civil Court has jurisdiction. Admittedly the suit is not for seeking the probate but for challenging the Will. Hence Civil Court alone has jurisdiction to decide the suit. The impugned order passed by the trial Court, therefore, does not call for any interference.

7]           The Revision, therefore, stands dismissed.

**[DR.SHALINI PHANSALKAR-JOSHI, J.]**