

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5174 OF 2018

Tanhubai Laxman Khole ... Petitioner
Vs.
Haushabai Gangadhar Chavan & Ors. ... Respondents

Mr. Pandit Kasar, Advocate for the petitioner.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **26th June, 2018.**

P.C.:

Upon mentioning, taken on production board.

2. This Writ Petition is directed against the order dated 21st March, 2018 passed by the 8th Joint Civil Judge Senior Division, Nashik thereby allowing the Application filed by the defendants/respondents under Order 18 Rule 3 of the Code of Civil Procedure.

3. There is a dispute regarding the flat between the siblings. The plaintiff/sister claims 1/4th right in the flat and other defendant/sister, who is respondent no. 1, has contended that their father has executed the will on 15th December, 2011 and has bequeathed the suit property in her favour. After completion of the evidence of the plaintiff, now the defendants wants to lead evidence.

4. After considering the submissions of the learned counsel for the petitioner and going through the plaint, application, reply and the impugned order, it appears that the fact of ownership of the flat by the father is not disputed. The plaintiff claims her 1/4th share in the suit property and defendant's right is entirely based on the execution of the will.

5. The main issue is whether the father had executed the will. Hence, the proof of will is very material and contested fact and therefore, the order passed by the trial Court allowing the Application of the defendants that first the attesting witnesses of the will are allowed to be examined, is a correct order. The defendant may enter the box subsequent to the evidence of the attesting witnesses. The defendant cannot succeed unless the will is proved. Hence, the change of sequence will not cause any prejudice to the plaintiff. The order passed by the learned trial Judge is maintained. Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)