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

WRIT PETITION NO. 198 OF 2018

Avdhut Agashe	...	Petitioner
V/s.		
Smt. Sindhu Agashe(decd)		
Through Anil Agashe and ors	...	Respondents

Mr.S. M. Kelkar, i/by Mahendra Agvekar, for the
Petitioner.
Mr. Siddhartha C. Wakankar, for the Respondent No.1.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 7th MARCH, 2018.

P.C. :

1] Heard learned counsel for the petitioner and learned
counsel for respondent No.1.

2] By this petition filed under Article 227 of the Constitution
of India, the petitioner is challenging the order dated 14.11.2017,
passed by the Joint Civil Judge Senior Division, below the
Applications at Exh.222 and 224, in Special Civil Suit No.846 of 1995.

3] By the Applications at Exh.222 and Exh.224, the
petitioner has taken objection to evidence affidavit of Mrs. Manjiri
Dilip Janpandit on the ground that this Court has vide its order dated
24th September 2013, in W.P. No.8115 of 2013, confirmed the order

passed by the trial Court, rejecting the proposed amendment sought by the respondent/plaintiff in the plaint relating to the Will of Smt. Sindhu Agashe.

4] As rightly submitted by learned counsel for the petitioner, the trial Court has, however, without adverting to the order of this Court dated 24th September, 2014 rejected the petitioner's objection to the recording of evidence of attesting witness to the said Will. In view thereof, the impugned order passed by the trial Court, rejecting the objection raised by the petitioner cannot be called as just, legal and correct.

5] The submission of learned counsel for respondent is that as the respondent is transposed as plaintiff, and it was done only on the basis of the last will of his mother, he has to bring on record evidence relating to the last will of his mother.

6] However, in this respect also, it is pertinent to note that this transposition of respondent as plaintiff of the suit has taken place prior to his application for amendment was decided and despite that the said application for amendment was rejected and that order was confirmed by this Court. In such situation, the impugned order passed by the trial Court overruling the objection raised by the petitioner to recording of such evidence cannot be called as just, legal and correct.

7] As a result the Writ Petition is allowed.

8] The impugned order passed by the trial Court is quashed and set aside and applications at Exh.222 and 224 are allowed to the limited extent of not allowing the evidence of attesting witness to be brought on record. Other prayers made in the applications about impounding of the affidavit evidence or the document or for issuing notice of perjury stand rejected.

9] The parties to act on the authenticated copy of this order.

[DR.SHALINI PHANSALKAR-JOSHI, J.]