

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5553/2017

Laxman Hari Bhandari

... Petitioner

V/s.

Anusaya Tukaram More

... Respondent

Mr. Nikhil Wadikar I/b. Nandu V. Pawar for the Petitioner
Mr. Ganesh T. Jadhav for Respondent Nos.1 to 3.

CORAM: K.K. TATED, J.

DATED : JANUARY 8, 2019

P.C. :

1 Heard. By this petition under Article 227 of the Constitution of India the Petitioner challenges the order dated 02.05.2014 passed by the Civil Judge, Junior Division Patan below Exhibit- 59 in Regular Darkhas No.41/2006 rejecting their Application to hold inquiry about the legal heirship of deceased Anusaya Tukaram More.

2 It is to be noted that in the present proceedings initially the legal heirs of the deceased, on the basis of the Will Deed, made an Application below Exhibit- 44 for joining them as party in Regular Darkhast No.41/2006 which was allowed, after hearing both the sides. On the basis of the amendment, the Petitioner proceeded with the Regular Darkhast. After more than two and half years, he made the present Application to hold inquiry about legal heirship of those persons. It is to be noted that the order passed by the Trial Court below Exhibit- 44 was not challenged by

the Petitioner and /or raised any objection about the same. Hence, the Trial Court rejected the Petitioner's Application below Exhibit- 59 in Regular Darkhast No.41/2006.

3 The learned counsel for the Petitioner submits that the Trial Court failed to consider the fact that it is a duty of the Respondent to prove the Will before making any Application for joining as party as legal heir of the deceased Respondent Anusaya Tukaram More. He further submits that though the Petitioner has specifically raised objection before the Trial Court about the validity of the Will Deed dated 05.09.2007, same was not considered by the Trial Court. Hence, the impugned order is liable to be set aside.

4 It is to be noted that earlier, when the legal heirs had made an Application below Exhibit- 44 for joining them as party on the basis of the Will Deed dated 05.09.2007, at that time, the Petitioner had not opposed the said Application, which was allowed by the court, after hearing both the parties. Thereafter after two and half years, the Petitioner made the Application below Exhibit- 59 without challenging order below Exhibit- 44 is not maintainable. These facts are considered by the Trial Court and dismissed the said Application.

5 Considering these facts, I do not find any substance in the Writ Petition. Hence, the Writ Petition stands rejected.

6 No order as to costs.

(K. K. TATED, J.)