

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3966 OF 2019

Vishnukant Chaturbhuj Bhutada ..Petitioner
V/s.
Sou. Ranjana Madhusudan Malpani & Anr. ..Respondents

Mr. Priyal Gopaldas Sarda, Advocate for the Petitioner.
Mr. Sarang S. Aradhye, Advocate for the Respondent No.1

CORAM : S.C. GUPTE, J.
DATED : 18th July, 2019.

P.C.

Heard learned Counsel for the Petitioner. This petition challenges a stay order passed by the Joint Civil Judge, Senior Division, Solapur under Section 10 of the Code of Civil Procedure, 1908. The impugned order stays the Petitioner's application for probate filed before the same court. The Petitioner's application for probate is in respect of the last will and testament of one Wallab Balkishan Attal, of which the Petitioner is an executor. Respondent No. 1, on the other hand, claims to be a legal heir of deceased Wallab Balkishan Attal and has filed her own suit for declaring the alleged will of Wallab Balkishan Attal to be a nullity. That suit was filed before the Petitioner's application for probate. On the application of Respondent No. 1, purportedly filed under Section 10 of the Code of Civil Procedure, 1908, the learned Civil Judge has stayed the hearing

of the Petitioner's application for probate. Since the suit, which is for declaration of nullity of the will, is in respect of the same will probate of which is sought in the application and these two proceedings are before the same court, it was really for that court to club the two matters and hear them together.

2. The impugned order passed by the trial court is not proper or in the interest of justice. Common evidence needs to be led in the two matters, in which common issues concerning execution of the purported last will and testament of Wallab arise.

3. In the premises, Rule is made absolute and the petition is allowed by quashing and setting aside the impugned order dated 07.12.2016 and substituting it with an order on Exhibit 2 of clubbing the hearing of the two matters, namely, CMA No. 234 of 2013 and Regular Civil Suit No. 418 of 2013.

4. At the request of both parties, the hearing of the application for probate and the suit are expedited. The parties may apply to the trial court for fixing a date of hearing.

(S.C. GUPTE, J.)