

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 7743/2019

(SAOJI BAKARAM DHUDAD **VERSUS** MAHADEO BAKARAM DHUDAS & OTHERS)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri B.M. Kharkate, counsel for petitioner.

CORAM : A.S. CHANDURKAR, J.

DATE : NOVEMBER 26, 2019.

An order recasting Issue No.2 is under challenge by the original defendant in the suit as filed by the plaintiffs.

A declaration has been sought that the Will dated 14.01.1999 executed by one Saraswatibai was a sham and bogus document. According to the plaintiffs, said Saraswatibai expired on 08.06.1998 and therefore it was not possible for her to have executed the Will dated 14.01.1999. In the written statement, the defendants denied the aforesaid aspect and relied upon the said Will. The trial Court initially had framed an issue casting the burden on the plaintiffs to prove that the said Will was invalid. By the impugned order, the defendant has been called upon to prove that the Will executed on 14.01.1999 was valid.

Heard Shri B.M. Kharkate, learned counsel for the petitioner and considered the decision in *Dilip Devidas Kachare Versus Prabhavatibai Ratnakar Dudggikar* [2019 (5) Mh.L.J. 338]. Considering the averments in paragraph 8 of the plaint and thereafter perusing the response of the defendant in the written statement, it is clear that the defendant being the propounder of the Will executed on 14.01.1999, he was called upon to prove the genuineness of that Will.

I do not find any error committed by the trial Court while recasting the Issue No.2. The facts of the decision relied upon indicate that the ratio therein is clearly distinguishable. Hence, no interference is called for. The Writ Petition is dismissed. No costs. The suit be decided on its own merits in accordance with law.

JUDGE

APTE