

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

WRIT PETITION NO. 6279 OF 2021

Suresh Baburao Patil & Ors.

...Petitioners

vs.

Vishal Prakashrao Sawant & Anr.

...Respondents

Mr.Chetan G. Patil for Petitioners.

Mr.Pradeep D. Dalvi for Respondents.

CORAM : BHARATI DANGRE, J.

DATED : 4 OCTOBER 2021

P.C. :

1. The Petitioner is aggrieved by the impugned order passed in Special Civil Suit No.157/2017 vide Exhibit 87.

By the application, the Defendant raised an objection to the will that was sought to be produced in evidence and by placing reliance on Section 68 of the Evidence Act, an objection was raised that unless and until one of the two attesting witnesses is examined, the will cannot be admitted in evidence.

2. Before the learned Judge, the decision of the Apex Court in case of **N. Kamalam vs. Ayyasamy**¹ came to be cited, which is an authoritative pronouncement on the point of attestation of the will and the evidence to be adduced when such will is to be produced in court.

The learned Judge, who has dealt with the said decision and though permitted exhibiting of the document, the objection as regards the admissibility of the aforesaid document is postponed. Prima facie it was

¹ AIR (2001) SC 2802

not permissible for the learned Judge to postpone the effect of the objection raised on the will being admissible in evidence independently and it is now informed by the parties across the bar that the proceedings are now scheduled for hearing before the learned Joint Civil Judge, Senior Division, Kolhapur.

The parties are in agreement that they would proceed with the hearing of the application, raising no objection, on the next date of hearing, being 6 October 2021. Since the parties express their willingness to argue on Exhibit 89, i.e. on the admissibility of the will before proceeding with the next stage, the writ petition is partly allowed in the aforesaid terms. No order as to costs.

(SMT. BHARATI DANGRE, J.)