

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2395 OF 2021

KAMAL MAROTRAO NALGE ALIAS KAMAL KUNDAN PATRAVALI
THRGPA HOLDER KUNDAN SANJEEV PATRAVALI
VERSUS
BHAGYASHREE SATYANARAYAN NALGE AND OTHERS

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Advocate for Petitioner : Mr. M. D. Narwadkar
Advocate for Respondent Nos.1 to 3: Mr. Anuj Phulpagar h/f
Mr. P. R. Katneshwarkar

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 23rd August, 2022

PER COURT :-

1. The learned Advocate for respondent nos.1 to 3/original plaintiffs, on instructions, makes a statement that they are ready to lead evidence in the Trial Court.
2. The challenge in this petition is to the order passed below Exhibit-120 in Special Civil Suit No.49/2019 by the learned Civil Judge, Senior Division, Nanded, thereby directing the present petitioner and respondent nos.4 & 5 i.e. defendant nos.1 to 2 to lead their evidence first and to prove the execution of the impugned will dated 09-10-2017, by allowing the application (Exhibit-120) filed by respondent nos.1 to 3/original plaintiffs.

3. In view of the settled legal position that course adopted by the Trial Court is not proper in view of the decision of this Court in **Gangabai Shivadas Patil and others Vs. Shantabai Jagannath Patil (Marathe) and Others** reported in **2020 (3) All M.R. 84**, and in view of the statement made by the learned Advocate for the respondent nos.1 to 3/original plaintiffs, they are ready to lead their evidence. The impugned order is unsustainable and the same is therefore, hereby quashed and set aside and the statement made by the plaintiffs is accepted as undertaking to this Court.

4. The writ petition is disposed of accordingly.

[NITIN B. SURYAWANSHI, J.]

Sameer