

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6798 OF 2017

Ulhas S/o Mohandas Khelwade & Anr. ...Petitioners
Versus
Vijay S/o Tukaram Khelwade ...Respondent.

Mr. Vijay B. Patil, Advocate for the petitioners.
Mr. Ajit M. Gholap, Advocate for the respondent.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 20th SEPTEMBER, 2022

ORDER :

1. Order passed by Civil Judge, Junior Division, Bhusawal, below Exhibit-70 in Regular Civil Suit No. 147/2013 is questioned in the present petition.

2. The respondent has filed suit claiming relief that by clubbing all the five sub divisions of gut no. 373 and after measurement of gut no. 373, property may be partitioned including portion of 2 Hectare 38 Are given to the plaintiff by Tukaram Khelwade by way of gift deed. The defendants opposed the suit by filing written statement. In the written statement, the defendants have claimed that there is no signature of deceased Tukaram Khelwade on the sale deed dated 30.03.2005, cancellation deed of will deed and the gift deed. Therefore, said

sale deed and cancellation deed of will deed and gift deed are forged, illegal and the signatures on it are also forged and the plaintiff has filed false suit on the said basis.

3. The plaintiff has filed his evidence affidavit. The defendants then filed application Exhibit-70 claiming direction against the plaintiff to produce will deed dated 05.01.2005, deed of cancellation of will deed, gift deed and sale deed dated 30.03.2005. It is contended in the application that all the documents were prepared on the same day and they are bogus and they are not signed by deceased Tukaram Khelwade. Therefore, the defendants need this documents for undertaking cross examination of the plaintiff. Said application was resisted by the plaintiff by filing a detail say. The Trial Court rejected the application holding that the plaintiff has never relied on any will deed and entire burden is on the plaintiff to establish his case. The Trial Court, therefore, rejected the application. This order is impugned in the present petition.

4. I have given due consideration to the rival submissions made by the respective learned advocates for the parties. Perused the grounds raised in the petition, documents filed on record and the impugned order.

5. The plaintiff in the entire plaint has nowhere referred the documents sought by the defendants. It is averred by the defendants that there is no signature of deceased Tukaram Khelwade on the said documents including gift deed and all the documents are forged according to them.

6. The Trial Court has framed issues thereby casting burden on the plaintiff to prove that deceased Tukaram Khelwade has executed gift deed dated 30.03.2005 in favour of the plaintiff. Issue is also framed to the effect as to whether the suit property is self acquired property of deceased Tukaram Khelwade and whether the plaintiff is entitled for partition and separate possession. In that view of the matter, the Trial Court is right in holding that the plaintiff has not relied on said documents and the said documents are not necessary for decision of the case. No case is made out by the petitioners to interfere in the impugned order. The writ petition is dismissed.

7. The petitioners may adopt appropriate remedy available in law to call such documents.

[NITIN B. SURYAWANSHI, J.]