

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1113 OF 2022**

Vijaykumar Manik Mangire .. Petitioner

Versus

Mohan Manik Mangire (since
deceased) through Legal Heirs
& Ors.

.. Respondents

...

Mr.I.M.Khairdi for the Petitioner.

...

**CORAM: RAVINDRA V. GHUGE, J.
DATED : 04th FEBRUARY, 2022**

P.C:-

1. The petitioner is aggrieved by the order dated 10/11/2021 delivered below Exh.94 vide which the request of the petitioner to examine a Cardiac Physician from a hospital in Special Civil Suit No.8 of 2013, has been rejected.

2. I have considered the strenuous submissions of the learned advocate for the petitioner/original plaintiff and the grounds (A to K) formulated in the memo of the petition.

3. The petitioner is the biological son of Laxmibai, who is the first wife of Manik Mangire. Mahananda is the second wife of Manik Manigare. Issue in the suit is as regards the Will

declared by Mahananda on 02/09/2009 when she was undergoing treatment for a heart ailment. She has passed away on 23/03/2011. The contention of the petitioner is that Mahananda was not in a proper state of mind to execute the Will dated 02/09/2009. As such, the petitioner desires to examine Dr.Nitin Toshnival, who is said to have treated Mahananda.

4. The trial Court has rejected (Exh.94) vide the impugned order by recording that Mahananda was admitted in Dinanath Mangeshkar Hospital in between 04/09/2009 to 12/09/2009. The petitioner/plaintiff was subjected to the cross-examination and he has admitted that the mental and physical condition of Mahananda on 02/09/2009 and 03/09/2009 was good. Dr.Somani had also examined Mahananda before she executed the Will Deed and based on his report that she was in a good physical and mental condition that the Will Deed was prepared.

5. The trial Court, therefore, came to a conclusion that the petitioner/plaintiff himself has admitted in the cross-examination that Mahananda was in a good physical and mental condition when the Will Deed was executed on 03/09/2009. There seems to be some confusion about the date of the Will in the light of the pleadings in the plaint, issue No.2 and the impugned order dated. 10/11/2021. Nevertheless, whether the Will Deed was executed on 02/09/2009 or 03/09/2009 can be decided by the trial Court.

6. Dr.Somani has issued a certificate on medical examination holding that she was in a sound condition and the plaintiff has also admitted in the cross-examination that she was in a sound condition.

7. Considering the above factors, the trial Court has rejected the application (Exh.94) and I do not find that the said order can be branded as being perverse or erroneous.

8. This petition, being devoid of merits, is dismissed.

(RAVINDRA V. GHUGE, J.)