

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

WRIT PETITION 1 OF 2022

Subhash Balasaheb Barse & Ors. .. Petitioners.

V/s.

Ashok Balasaheb Barse & Ors. .. Respondent.

Mr.A. K. Patil, for the Petitioner.

CORAM : ROHIT B. DEO, J.

DATE : 29 JULY 2022

P.C.

1. The petitioner is the plaintiff in R.C.S.7 of 2020 which is instituted for declaration and injunction.

2. Declaration is to the effect that the purported Will of the deceased Smt. Rukminibai Balase is fabricated and otherwise illegal and does not confer any right in favour of defendant 1.

3. The plaintiff preferred an application (Exhibit 111) seeking direction that the defendants adduced evidence first. According to the plaintiffs, entire burden of proving execution and validity of the Will is that of defendant 1.

4. Vide order impugned dated 30/1/2020, the learned trial Judge was pleased to reject the application. While the learned Counsel for the plaintiff would submit, inviting my attention to the provisions of Section 103 of the Indian Evidence Act that the entire

burden of proving execution and legality of the will is that of defendant 1, I am not inclined to accept that submission in entirety.

5. It is true that if natural succession is obstructed the beneficiary of the 'Will' will have to prove the 'Will' in accordance with provisions of Indian Succession Act, 1925. However, that in itself, does not mean that the defendant as the beneficiary must step into the witness box before the plaintiff. The evidence can not be adduced in piecemeal manner. It is for the plaintiffs to first step into witness box and make out a case of existence of suspicious circumstances, if he is assailing the validity of the Will on that basis. It is true that the Court will not dilate on purported suspicious circumstances if the Will itself is not proved. However, in the present facts, if the defendant is directed to adduce evidence first, even if, the defendant proves the Will, he cannot be asked to prove the negative. The defendant can not be expected to dispel suspicious circumstances which are not even prima facie established in the evidence of the plaintiff. The result would be that even after evidence of the defendant, and if and when the plaintiff establishes the existence of suspicious circumstances surrounding execution of the Will, the defendant shall again have to enter the witness box in rebuttal.

6. Considering the factual matrix, I am not inclined to interfere in writ jurisdiction. I note that the suit is pending since the year 2000. The trial Court is requested to disposed of the suit within next 12 months.

7. Petition is dismissed.

(ROHIT B. DEO, J.)