

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 1468 OF 2020

- 1) Ketaki Chetan Paradkar,
Aged about 42 years,
Occupation – Teacher,
- 2) Malhar Chetan Paradkar,
Aged about 16 years,
Occupation – Student.
- 3) Megh Chetan Paradkar,
Aged about 9 years,
Occupation – Student,

Petitioners 2 and 3, through their
mother/petitioner 1.

All 1 to 3 R/o Rami Heritage, RTO
Road, Akola, Tq. and District Akola.

Presently R/o C/o J.Y. Ghanekar,
Plot No. Q-1, “Jaya”, Near Eight Road
Square, Laxmi Nagar, Nagpur.

.... **PETITIONERS**

VERSUS

Vedvati Krishna Paradkar,
Aged about 73 years,
Occupation – Household,
R/o Rami Heritage, RTO Road,
Akola, Tq. and District Akola.

.... **RESPONDENT**

Mr. A.R. Deshpande, Counsel for the petitioners,
Mr. S.V. Sohoni, Counsel for the respondent.

CORAM : ROHIT B. DEO, J.

DATED : 21st FEBRUARY, 2022

ORAL JUDGMENT :

Heard. **Rule.** With consent, the petition is heard finally.

2. The petitioners are questioning an order dated 05-3-2020 rendered by the learned 4th Joint Civil Judge (Senior Division), Akola in Miscellaneous Judicial Case 957/2019 whereby witness summons is issued at the instance of the respondent herein ostensibly to enable respondent to prove the disputed Will.

3. Considering the scope of the proceedings under Section 2 of the Bombay Regulation Act, 1827 (Act) an enquiry into the legality or otherwise of the Will, is wholly unnecessary since admittedly Special Civil Suit 8/2020 is instituted by the petitioners seeking a declaration of illegality qua the very same Will and relief of partition and further separate possession.

4. Both the learned Counsel state that the proceedings under the Act and the Special Civil Suit are pending in two different courts.

5. The order impugned will have to be set aside since unnecessary

expanding of the controversy in the proceedings under the Act shall be contrary to the legislative intent which is that order in proceedings under the Act shall serve a limited purpose, i.e. to establish present right to administer an estate and that the rights shall be subservient to decision in an appropriately instituted civil suit.

6. The order impugned is set aside.

7. The parties are at liberty to prefer an appropriate application before the Principal District Judge for transferring both the proceedings to the same learned Judge. If any application is preferred, the Principal District Judge is requested to take an appropriate decision on clubbing the matters within a week.

JUDGE

adgokar