

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 3860 OF 2021

Tikamdas s/o Sukhdevdas Vaishnao

Vs.

Circle Inspector (Mandal Adhikari), Achalpur, District Amravati and Ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. P.R. Agrawal, Advocate for petitioner.
Mr. D.P. Thakare, Addl. GP for respondent/State.

CORAM : MANISH PITALE J.

DATE : 11.04.2022.

By this writ petition, the petitioner is seeking direction for setting aside the remark mentioned by the Circle Officer, Achalpur, in the record of rights, whereby it is recorded that the mutation entry taken by the Talathi, cannot be certified for the reason that the Will Deed on which the petitioner is placing reliance is not registered and probate is also not obtained.

2. This Court issued notice on 28.03.2022 for final disposal, returnable today. Mr. Thakare, learned Additional Government Pleader appeared on behalf of respondents and sought short adjournment. But, since the position of law is squarely covered in favour

of the petitioner, this Court inclined to dispose of the writ petition on the admitted set of facts.

3. In the present case, the petitioner has relied upon unregistered Will Deed dated 17.10.2017, executed in his favour. On the strength of the said Will, the petitioner applied for suitable mutation entry in the record of rights, upon which the Talathi issued notices as per the necessary procedure. The notices were served. There was no objection raised by any party. As a consequence, the Talathi took Entry No.577 on the basis of the said Will in favour of the petitioner. But, the Circle Officer by remark/entry dated 05.05.2021 refused to certify the mutation entry for the aforesaid reason i.e. the Will being unregistered and the petitioner having failed to obtain probate.

4. The petitioner has relied upon judgments of this Court in support of his contention that the Will is neither required to be registered, nor probate is necessary, so long as the property is admittedly situated in a place outside the original jurisdiction of the Bombay High Court.

5. A perusal of the judgment of this Court in the case of *Kantabai Mahipat Sonavane Vs. Nimba*

Onkar Patil, 1999 (4) All.M.R. 263, shows that in the aforesaid contention raised on behalf of the petitioner is well fortified.

6. In fact, in the judgment of ***Bhagwanji Karsanbhai Rathod Vs. Surajmal Anandraj Mehta, 2004 (1) Mh.L.J. 62***, in similar circumstances, this Court held thus:

“8. On conjoint reading of the above provisions, it would appear that only Wills specified in Clauses (a) and (b) of Section 57 of the Act would require the executor or legatee to obtain probate/letters of Administration from the court of competent jurisdiction so as to pursue the right arising under the will to its logical end. This legal position is reinforced from the exposition of our High Court in Ahmed's case (supra) as well as Jyoti's case (supra). Therefore, the first question that needs to be considered is; whether the subject will is covered by Section 57, Clauses (a) and (b) of the Act? As mentioned earlier, it is not in dispute that the suit property is situated at Pune and the will was also executed at Pune. If that is so, it is not possible to countenance the submission that Section 57(a) and (b) of the Act would apply. Understood thus, it was not necessary for the Petitioner to obtain probate so as to proceed with the execution proceedings.”

7. In the present case, admittedly the property in question is situated beyond the original jurisdiction of the Bombay High Court and therefore, insistence upon obtaining a probate by the Circle Officer was unjustified. It is settled law that Will Deed is not mandatorily required to be registered. Therefore, both the grounds on which the Circle Officer refused to certify the mutation entry are found to be unsustainable.

8. Accordingly, the writ petition is allowed. The remark/entry made by the respondent No.1- Circle Officer, Achalpur, dated 05.05.2021 is quashed and set aside.

9. The respondent No.1 is directed to consequently certify the aforesaid mutation entry No.575 in favour of the petitioner within two weeks from today.

JUDGE

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