

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

WRIT PETITION NO. 446 OF 2019

Sudhakar Pandurang Kshirsagar,
Aged 64 years, occupation
Cultivator, R/o Bopapur, Tah.
Hinganghat, District – Wardha.

.... **PETITIONER**

// **VERSUS** //

Pruthwiraj Damodharrao Daulatkar,
Aged 35 yrs., Occupation –
Cultivator, R/o Bopapur, Tah.
Hinganghat, District Wardha.

.... **RESPONDENT**

Shri G.M. Shitut, Advocate a/w Shri A.A. Sambarey, Advocate for the petitioner.

Shri P.S. Kadam, Advocate for the respondent.

CORAM : MANISH PITALE, J.

DATED : 25.03.2022

ORAL JUDGMENT :

RULE. Rule is made returnable forthwith. Heard finally with the consent of learned counsel for the rival parties

2. By this petition, the petitioner is challenging concurrent orders passed by the two Courts below, under the provisions of the Indian Succession Act, 1925 ('the Act'), whereby an application moved by the respondent for grant of probate of a Will, has been allowed. The petitioner was the objector in the said application.

3. The respondent moved the application under Section 276 of the Act for grant of probate in the context of a Will dated 13.03.2001, said to

have been executed by one Sakharam Tukaram Kshirsagar.

4. The respondent claims to be the beneficiary under the said Will. It is stated, that the said Sakharam Tukaram Kshirsagar expired on 25.05.2005 and that the Will was executed in favour of the respondent, since the said person treated him as his grandson.

5. In the said proceeding, the petitioner filed objection, claiming to be a relative of the deceased. Various grounds were raised in the objection filed before the concerned Court. The parties led evidence in support of their respective stands. It was specifically contended on behalf of the petitioner that signature on the aforesaid Will Deed dated 13.03.2001, was materially different from the signatures of the deceased person on various documents, including registered Sale-Deeds and a requisition slip of a particular Bank, wherein the deceased was holding his pension account.

6. The Court of Civil Judge, Senior Division, Wardha, considered the evidence and material on the record and rejected the objections raised on behalf of the petitioner. It was found that since the witness and scribe to the Will were examined and they had vouched for the genuineness of the contents as well as the signature of the deceased, there was sufficient material to allow the application filed by the respondent. Accordingly, the application was allowed and the probate certificate was issued.

7. Aggrieved by the same, the present petitioner filed appeal under

Section 299 of the Act.

8. By the judgment and order dated 04.07.2018, the District Court dismissed the appeal and confirmed the order passed by the Court below.

9. The petitioner filed the present writ petition, wherein notice was issued and interim stay was granted of the orders of the Courts below. The respondent appeared through Counsel and the writ petition was heard finally. Mr. A.A. Sambarey, learned Counsel appearing for the petitioner invited attention of this Court to the copy of the Will Deed, as well as copies of the registered Sale-deeds and other documents to highlight the contention raised on behalf of the petitioner, that there was material difference in the signatures of the deceased person and this circumstance was not properly dealt with by the Courts below. It was submitted that the procedure to be adopted in such cases, as per Section 295 of the Act, was to treat the proceeding as a Regular Suit, wherein the person seeking probate is to be treated as a plaintiff and the objector as a defendant. It was submitted that the Courts below concurrently erred in dealing with the specific contention raised on behalf of the petitioner regarding the aforesaid suspicious circumstance. No effort was made by the Court to ensure that proper evidence is available on record to deal with the said contention, which went to the very root of the matter. It was submitted that both the Courts below erred in holding that since the probate proceedings were not concerned with the question of title, the objection raised on behalf of the petitioner did not deserve consideration.

10. On the other hand, Mr. Kadam learned Counsel appearing on behalf of the respondent contended that a perusal of the orders passed by the Courts below would show that the oral and documentary evidence was appreciated and it was found that since the scribe and the witness pertaining to the Will Deed appeared in the Court and deposed in support of the document, the probate certificate was correctly granted. It was submitted that, when the witness to the Will had deposed before the Court and nothing material had been extracted in his cross-examination, there was no scope to further probe into the question of genuineness of the Will. Reliance was placed on judgment of this Court in case of ***Baban Rambhau Jagdale vs. Hanmant Rambhau Jagdale 2003(1)Mh.L.J. 113.***

11. Heard learned Counsel appearing for the rival parties and perused the material on the record. In the present case, since the application filed by the respondent seeking probate of the Will was specifically objected to by the petitioner, it was clearly a contentious case as contemplated under Section 295 of the aforesaid Act. Consequently, the proceeding was to be treated as a Regular Suit with the respondent being treated as a plaintiff and the petitioner being treated as defendant. The scope of the proceedings was specifically to inquire into the genuineness of the aforesaid Will, said to have been executed by Sakharam Tukaram Kshirsagar.

12. The material on record shows that the scribe and witness to the Will were examined. According to the Courts below, the evidence of the said witnesses was enough to prove the genuineness of the Will and that since the

proceedings were not concerned with determining the title of the testator in the property, the material made available on the record was sufficient to grant the probate certificate. Both the Courts below proceeded on the basis that the scope of the proceeding was limited to determining the genuineness of the Will, of which probate was sought.

13. A perusal of the orders passed by the Courts below shows that the oral and documentary evidence was discussed and findings were rendered concurrently in favour of the respondent. But, the crucial aspect of the matter pertaining to the question of genuineness of the Will, in the context of the signature on the Will, specifically raised on behalf of the petitioner does not appear to have been adverted to in a satisfactory manner. The petitioner has emphasized upon the marked difference in signature on the aforesaid Will Deed dated 11.03.2001, said to have been executed by Sakharam Tukaram Kshirsagar and signatures of the very same person on registered Sale-Deeds brought on the record by the petitioner. In fact, the signature of the deceased on a bank slip was also placed on record of the Courts below.

14. While discussing the aforesaid aspect of the matter, the Courts below have erroneously observed that since the Will-Deed was executed in the year 2001 and the copies of the registered Sale-Deeds pertained to the period thereafter, the contention raised on behalf of the petitioner in respect of the alleged discrepancy in the signatures was not relevant. This could not have been a factor for the courts below to refuse to delve deeper into the

matter and to properly consider the specific contention raised on behalf of the petitioner pertaining to the signatures as aforesaid, in the backdrop of the question pertaining to genuineness of the Will. It was clearly within the scope of the proceedings before the Courts below to have examined the said contention in detail and to have granted opportunity to the parties to lead evidence in that regard. No effort in this regard appears to have been made by the Courts below and there is no discussion on this aspect of the matter.

15. This Court is of the opinion that the aforesaid contention specifically raised on behalf of the petitioner warranted a deeper enquiry into the matter and a proper opportunity to the parties to lead evidence in that regard. On this ground alone, the petitioner has made out a case for interference with the impugned orders.

16. Reliance placed on behalf of the respondent on the judgement of this Court in the case of ***Baban Rambhau Jagdale vs. Hanmant Rambhau Jagdale*** (supra) is misplaced because it was found therein that the objectors had failed to support the contention pertaining to suspicious circumstances. In the present case, the Courts below failed to properly deal with the specific objection raised on behalf of the petitioner and hence the present case is distinguishable.

17. In view of the above, the writ petition is partly allowed.

18. The orders passed by the Court of Civil Judge, Senior Division,

Wardha and the District Court, are quashed and set aside. The matter is remanded to the Court of Civil Judge Senior Division, Hinganghat, as it is the said Court, which now has jurisdiction to decide the probate case initiated by the respondent herein.

19. The aforesaid Court at Hinganghat is directed to take up the matter in view of the observations made by this Court and grant opportunity to the parties to lead evidence, if they so desire, on the specific contention raised on behalf of the petitioner pertaining to the signature of the deceased Sakharam Tukaram Kshirgarar and any other matter of relevance pertaining to the question of genuineness of the Will. It is made clear that this Court has not expressed any opinion on the merits of the matter.

20. The parties shall appear before the aforesaid Court at Hinganghat on 11.04.2022. The said Court shall proceed expeditiously in the matter and make an endeavour to dispose of the probate case within six months from 11.04.2022. Rule made absolute in above terms.

(MANISH PITALE, J.)

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