

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2407 OF 2023

Shriniwas Shrikisan Baheti Petitioner

Versus

Shrikisan Hiralal Baheti Respondent

.....

Mr. Swapnil A Deshmukh, Advocate for the Petitioner

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 27th JULY, 2023

ORDER :

1. The petitioner is aggrieved by the order passed by the learned Civil Judge, Junior Division, Wadwani, Dist. Beed, below Exhibit-53 in Regular Civil Suit No.43 of 2015, thereby rejecting the application filed by the petitioner/defendant under Order XIV of the Code of Civil Procedure.

2. The respondent/plaintiff instituted suit for declaration of ownership and for a declaration that will bearing No.1049/2004 dated 12/04/2004 is illegal. The petitioner/defendant appeared in the suit and filed written statement and made categorical statement that the said will deed dated 12/04/2004 is executed by Basantabai @

Kaushlyabai i.e. wife of respondent/plaintiff and mother of petitioner/defendant, and she had sole right to transfer the property standing in her name by making will, in his favour

3. On the basis of pleadings, the Trial Court framed issue No.3 as, "*whether the petitioner/defendant proves that Basantabai has willingly executed the will in favour of the defendant*". The petitioner/defendant filed application Exhibit-53 to delete issue No.3 as it wrongly casted burden on the defendant to prove the will deed claiming that it is the obligation of the plaintiff to prove the claim that the said will deed is illegal. This application was opposed by the plaintiff and the Trial Court has rejected the same. Hence, the present petition.

4. Heard the learned advocate for the petitioner. Perused the writ petition memo, annexures thereto and the impugned order.

5. Taking into consideration pleadings of the defendant in written statement, it is clear that he is the beneficiary of the will deed executed by Basantabai @ Kaushlyabai and he has claimed that the will deed was willingly executed in his favour and on the basis of the same, he is entitled to get the

suit property, which is mentioned in the will. In view of these averments, the Trial Court is right in holding that burden of proof is on the defendant to prove the said will as he is ascertaining the existence of the said will. The Trial Court has rightly rejected the application filed by the petitioner/defendant seeking deletion of issue No.3. There is no illegality or perversity in the order impugned in the present petition. No case is made out by the petitioner to interfere in the impugned order in extraordinary writ jurisdiction. The writ petition being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane