

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

32 WRIT PETITION NO.1468 OF 2023

SUBHASH BHANUDAS WAGH AND OTHERS  
VERSUS  
DHRUPADABAI DEVIDAS WAGH DIED THROUGH LRS PRALHAD  
DEVORAO TUPE AND OTHERS

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Mr. A. D. Kasliwal, Advocate for the Petitioners.  
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**CORAM : SHARMILA U. DESHMUKH, J.**  
**DATED : FEBRUARY 09, 2023.**

**PER COURT :**

1. Heard.
2. The petition challenges the order dated 30<sup>th</sup> August, 2022 passed by the Trial Court below Exh.139 in Regular Civil Suit No.1843 of 2012, whereby the petitioners' application for sending the Will to the handwriting expert came to be rejected.
3. Regular Civil Suit No.1843 of 2012 was instituted by one Dhurpadabai w/o. Devidas Wagh against the petitioners herein, seeking a declaration that the Will dated 16<sup>th</sup> September, 2009 alleged to have been executed by her husband Devidas Wagh in favour of the petitioners herein be declared, false and fabricated document and for declaration of ownership in respect of property bearing gut no.27 and 88. During the pendency of the proceedings,

the original plaintiff expired on 7<sup>th</sup> September, 2018, and on 3.11.2018 an application was filed by one Pralhad-respondent no.1 herein, for being impleaded as a legal representative of the deceased-plaintiff. The application came to be allowed by the trial Court and was subsequently recalled upon the objection taken by the petitioners herein. The Trial Court, considering the objections raised by the petitioners, initiated an enquiry under Order 22 Rule 5 of the Code of Civil Procedure, 1908 (for short, "the Code), in which the evidence came to be adduced on behalf of the parties. During the summary enquiry, the respondent No.1-Pralhad placed reliance on the Will dated 27<sup>th</sup> March, 2019 and claimed to be the legal representative of the deceased-plaintiff on the strength of the said Will dated 27<sup>th</sup> March, 2019. By an application dated 28<sup>th</sup> November, 2019, the petitioners sought to send the Will to the handwriting expert as according to the Petitioners there appears to be a doubt on the authenticity of the said Will dated 27<sup>th</sup> March, 2019.

4. Heard the learned counsel for the Petitioners.

5. The enquiry which is contemplated under the provisions of Order 22 Rule 5 of the Code, has limited scope and it is directed only to ascertain as to whether the respondent no.1 is the legal representative of the deceased-plaintiff. In the said proceeding, the issue about the genuineness of the Will dated 27.03.2019, cannot be gone into as the purpose is bring on record

the legal representative in place of the deceased-plaintiff. In the original proceeding what is under dispute is the Will executed by the husband of the plaintiff dated 06<sup>th</sup> September, 2009 in favour of the Petitioners and at least at this stage that there is no amendment of the plaint seeking to put into effect the alleged Will dated 27.03.2019. Considering the stage at which the application has been made for sending the Will to the handwriting expert, in my opinion, the said application is misconceived as the genuineness of Will dated 27.03.2009 is not in issue and will not be considered at the time of deciding the original suit.

6. Learned counsel for the Petitioners submits that the Petitioners have disputed the genuineness of the Will and, as such, the finding of the trial Court that the Will dated 27.03.2019 is not in dispute is erroneous. It is by reason of doubting the genuineness of the Will, that the application was sought to be preferred for sending the Will to the handwriting expert.

7. Considering the stage and the purpose of instance Will is sought to be relied upon, it is not necessary for the Trial Court to enter into the issue of genuineness of the Will dated 27.03.2019, which can be gone into if the Will is pressed into service by the Respondent no.1-Pralhad, for the purpose of claiming any interest in the property. At this stage, it appears that, the Respondent No.1 is trying to step into shoes of the original plaintiff who has expired in the capacity as legal representative.

8. For the reasons above, there is no infirmity in the impugned order dated 30<sup>th</sup> August, 2022. Petitioners are at liberty to move the appropriate application objecting the genuineness of the Will at the appropriate stage, in event, any rights in the suit property are claimed on the basis of the Will dated 27<sup>th</sup> March, 2019.

9. Writ Petition stands dismissed.

( SHARMILA U. DESHMUKH, J. )