

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4211 OF 2020

**GOPAL S/O EKNATH SANDHYANSHIVE THROUGH LRS GITA W/O
GOPAL SANDHYANSHIVE AND OTHERS
VERSUS
GAJANAN S/O EKNATH SANDHYANSHIVE AND ANOTHER**

...

Advocate for Petitioners : Mr. Balbhim R. Kedar
Advocate for Respondent No.1 and 2 : Mr. V.Y. Patil

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 08th MARCH, 2023

PER COURT :

1. By this petition, filed under Articles 226 and 227 of the Constitution of India, petitioners impugn the order dated 10/01/2020, passed by learned Joint Civil Judge, Junior Division, Bhusawal, below Exhibit-77 in R.C.S. No.115/2010, thereby rejecting the application filed by petitioners.

2. By the said application, petitioners/original plaintiffs prayed that they may be permitted to produce on record copy of the will deed dated 26/09/2003 executed by their father vide registration No.5343/2003. They have also prayed for permission to produce original sale deed dated 11/10/2010.

3. Having heard learned advocates for petitioners and respondents on merits and after perusing the grounds raised in the

petition and documents placed on record, as well as, the impugned order, this Court is of the view that impugned order is unsustainable.

4. During the course of hearing, learned advocate for petitioners has fairly conceded that sale deed dated 11/10/2010 is already on record at Exhibit-25. Therefore, he did not press the prayer for production of sale deed.

Considering the fact that will deed dated 26/09/2003 was located subsequent to the filing of suit, it could not be produced at the earlier point of time, since the petitioners had no knowledge about the said will deed. In view of these facts, petitioners were not expected to mention anything about the will deed in the plaint. Trial Court has committed error by rejecting application of the petitioners thereby denying them fair opportunity to produce best possible evidence in support of their case. The impugned order is likely to lead to multiplicity of proceedings. The same is, therefore, unsustainable in the facts of the present case. In the result, following order:-

ORDER

- (I) Writ petition is allowed.
- (II) Impugned order dated 10/01/2020, passed by learned Joint Civil Judge, Junior Division, Bhusawal, below Exhibit-77 in R.C.S. No.115/2010, is hereby quashed and set aside.

- (III) Application Exhibit-77 in R.C.S. No.115/2010 is allowed to the extent of permitting petitioners to produce the will deed on record.
- (IV) Petitioners are permitted to file amendment application to make their pleadings in respect of the said will deed.
- (V) Petitioners shall pay cost of Rs.10,000/- to the respondents in trial Court.

(NITIN B. SURYAWANSHI, J.)