

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10594 OF 2015

Ravindra Laxman Patil.

...Petitioner.

Versus

Durga Ramesh Patil and Others.

..Respondents.

*Mr. V. S. Kapse i/b Mr. Kunal Rane for the petitioner.
Mr. Suresh Kamble for respondent No.1 and 2.*

Coram : Sharmila U. Deshmukh, J.

Date : August 2, 2023.

P. C. :

1. By this petition, the challenge is to the order dated 22nd July 2015 rejecting the petitioner's application for exhibiting the Will dated 18th May 2001. The proceedings being Special Civil Suit No. 50 of 2007 has been instituted seeking probate of the Will dated 18th May 2001. Learned counsel appearing for the petitioner submits that two witnesses were examined by the petitioner along with himself for proving the Will dated 18th May 2001. He would further submit that the trial Court has declined to exhibit the Will for the reason that contents of the Will are not proved by the witnesses examined.

2. *Per contra*, learned counsel appearing for the respondent

submits that the attesting witnesses have not duly proved the Will and as such the Will cannot be exhibited. He would further submit that the petitioners are precluded from examining further witnesses to prove the Will.

3. Considered the submissions.

4. The factual position is not disputed that the attesting witnesses have been examined by the petitioner in respect of the execution of the Will dated 18th May 2001. After the evidence of attesting witnesses, an application has been moved for exhibiting the document which has been declined by the impugned order. The purpose of exhibiting the document is only to identify and locate the document. It is settled law that merely because the document is exhibited, that does not imply that the document has been proved and the contents are proved. The question as to whether the Will has been proved will have to be decided at the time of final hearing when the evidentiary value will be considered by the trial Court.

5. As regards the submission of learned counsel appearing for the respondent that after exhibiting the Will, the petitioner be precluded from leading further evidence, I do not see any reason to do so. The proceedings in question are probate proceedings and it is

open for the petitioner to prove the execution of Will dated 18th May 2001 in accordance with the procedure contemplated by law.

6. In view of the above, the impugned order dated 22nd July 2015 is quashed and set aside. By reason of the order being quashed, the application filed by the plaintiff dated 11th March 2014 stands allowed. The Will is directed to be marked as exhibit subject to all objections which may be raised by the respondent at the time of final arguments. Needless to clarify that marking of the Will as an exhibit will not be construed as proof of the Will.

7. Writ petition stands disposed of.

[Sharmila U. Deshmukh, J.]