



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition (WP) No. 5534 of 2023

Sau. Sunita W/o Sushil Ahir

Versus

Shri Santosh S/o Fulchand Yadav and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri P.S.Raut, Advocate for the petitioner.

CORAM : ANIL S. KILOR, J.

DATED : 28th AUGUST, 2023.

In a suit for declaration that the Will dated 5th August, 1998 shown to have been executed in favour of the defendant nos. 1, 2 and Smt. Tulsabai Fulchand Yadav is sham, bogus, null and void and same is not executed in their favour by the deceased testator Late Fulchand Raghunathsingh Yadav, an application came to be filed by the petitioner for framing of additional issue, as under :

“Whether the defendant no. 1 and 2 prove that, the alleged Will dated 08.05.1998 shown to have been executed by late Fulchand Raghunathsingh Yadav is genuine and valid and it is executed by him out of his free volition and wish and thereby bequeathed properties (i), (ii), (iii) and (iv) described in paragraph no.2 of the plaint in favour of defendant 1, 2 and their mother Tulsabai excluding his Five Daughters ?”

3. The learned trial Court after holding that the plaintiff is trying to shift her burden on the defendant nos. 1 and 2 and if it is allowed the effect of the same would be that, if the defendant nos. 1 and 2 did not enter into witness box, for the reason that they failed to establish the Will to be genuine one, the suit would have to be decreed and such course cannot be adopted, accordingly the application was rejected.

4. After considering the above referred reasons recorded by the learned trial Court, I am of the opinion that no error has been committed by the learned trial Court in rejecting the application preferred by the petitioner. Accordingly, the writ petition is dismissed.

[ANIL S. KILOR, J.]