



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

39 WRIT PETITION NO. 9070 OF 2022

Hiralal Ghanshamdas BhutadaPetitioner

VERSUS

Pujya Chudamani Balasaheb Maharaj TrustRespondent

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Mr. S. V. Natu, Advocate for the Petitioner.

Mr. D. P. Deshpande, Advocate for the Respondent.

CORAM : R. M. JOSHI, J.

DATE :24th JUNE, 2024.

PER COURT :

1. This Petition takes exception to the order passed below Exhibit 44 in Regular Civil Suit no. 105/2007 wherein the Trial Court was called upon to decide the dispute between the parties with regard to execution of will by Ghanshamdas Bhutada.

2. Petitioner filed application Exhibit 44 raising objection to exhibiting will deeds dated 09.08.2011 bearing day book Nos. 6650/2011 and 6651/2011. The said objection is raised on the ground that the witness who is examined by the Respondent is not the attesting witness but he is identifying witness. The said application is rejected by the Court by relying upon the examination-

in-chief of witness Deelip Nagargoje. Learned counsel for Petitioner takes serious objection with regard to observations made by the Trial Court in Paragraph no. 14 of the order which, according to him, practically accepts the case of the Respondent with regard to the proof of execution of will. It is his submission that the said issue ought to have been decided at the time of final hearing by adverting to contentions of rival parties and entire evidence led.

3. Learned counsel for Respondent supports the impugned order as according to him, the observations made by Trial Court are not on merit of the case but are for the limited purpose of deciding issue of exhibiting one of the wills. It is further submitted that examination-in-chief of this witness is in progress and only one will was shown to the witness and that objection sought to be raised is not tenable.

4. This Court finds substance in the contention of learned counsel for the Petitioner that the learned Trial Court has practically accepted the contention of the other side with regard to proof of will and it being in accordance with the law. If the Court was only referring these observations for limited purpose of exhibiting the will,

there ought to have been such reference in the order impugned. The tenor of order, however, does not indicate so. The best course which ought to have been adopted by the Trial Court was to specify in the order that the observations made therein are for limited purpose of exhibition of document. By making observations, on merit of the will, the Court practically seems to have decided this issue at this stage which is not permissible in law. This Court, therefore, finds it appropriate to set aside the impugned order.

5. Learned Trial Court to mark exhibit number to the will for the purpose of identification and to decide the objection raised with regard to proof thereof, on the basis of objection raised as to whether the witness is attesting witness or identifying witness to will, at appropriate stage. Trial Court not to get influenced by the observations made in this order, as same are made for limited purpose of deciding this Petition.

6. As far as challenge to the order below Exhibit 31 is concerned, since the witness is being now examined, such challenge would become infructuous. This Court does not find it appropriate to cause interference therein.

7. Petition stands disposed of in above terms.

(R. M. JOSHI)
Judge

dyb