

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15987 OF 2024

SATISH
RAMCHANDRA
SANGAR

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SATISH RAMCHANDRA
SANGAR

Date: 2024.11.29
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Hausabai Shankar Kadav

Age : 78 Years, Occupation : Housewife,

Residing at : Nele, Taluka and District : ...Petitioner

Satara. (Original Defendant No.1)

Versus

1. **Sarswati Tukaram Bhagat**

Age : 75 Years, Occupation : Housewife,

Residing at : Jalgaon, Taluka : Koregaon,

District : Satara.

2. **Sonubai Dyandev Pisal (deceased)**

(LR – present Petitioner and Respondent No.1)

3. **Laxman Kerba Jadhav (deceased)**

3(A) **Prabhavati Laxman Jadhav**

Age : 55 Years, Occupation : Housewife,

3(B) **Amit Laxman Jadhav**

Age : 28 Years, Occupation : Agriculture,

3(C) **Rohit Laxman Jadhav**

Age : 25 Years, Occupation : Education,

4. **Laxman Mahadev Chavan**

Age : Adult, Occupation : Agriculture,

5. **Shrirang Antu Chavan**

Age : 54 Years, Occupation : Agriculture, Service

3(A) to 3(C), 4 and 5 are residing at :-

Nele, Taluka and District : Satara.

...Respondents

Ms.Suvarna Yadav h/f Mr.Shrikant Yadav:-	Advocate for Petitioner.
No one is present:-	On behalf of the Respondents.

CORAM : S. M. MODAK, J.

DATE : 25th NOVEMBER 2024P. C. :-

1. Heard learned Advocate for the Petitioner/Defendant No.1.
2. There is a suit for partition filed by the Respondent No.1. One Sonubai is the Defendant No.2. She has executed a will on 26th June 2003 in favour of Defendant No.1 – Hausabai who is the present Petitioner.
3. The trial of the suit is going on. The Defendant No.1 could not produce the original will. That is why, she filed an Application for leading the secondary evidence on 24th July 2019 (Page Nos.50-51). Court accepted her prayer. At that time, the Plaintiff has not filed reply.
4. Thereafter, the Plaintiff examined few of the witnesses to prove the will. It is a matter of record. Then, the Defendant No.1 filed an Application to give exhibit number to the said will (Page Nos.74-45). It was rejected as per the order dated 12th July 2024 (Page No.80). I have gone through the order.

5. The Court has observed two aspects. **One** when the permission was granted to lead secondary evidence, at that time, say was not filed. If, the Plaintiff has not filed reply, Court has got every right to decide the Application. It is true that there is observation. It is subject to the provisions of Section 65(c) of the Indian Evidence Act, 1872. It talks about '*a document being lost or not found*'. The trial Court has laid emphasis on this aspect in Para No.11.

6. There cannot be any dispute about fulfillment of the conditions for adducing secondary evidence. **However, this Court feels that the trial Court has erred in one aspect.** When, the Application for leading secondary evidence was very much available and when few of the witnesses to prove the will have been examined, the trial Court was bound to deal with the prayer for marking the document as an exhibit on the basis of available evidence. Instead of that, it was rejected. Hence, the matter needs to be remanded.

7. Hence, following order is passed:-

ORDER

(i) The order dated 12th July 2024 passed by the Court of Civil Judge, Senior Division – Satara in Regular Civil Suit No.220 of 2003 is set aside.

- (ii) The trial Court is directed to decide Application of the Defendant No.1 to mark certified copy of will as Exhibit after going through the earlier Application dated 24th July 2019 and the evidence on record.

8. With these observations, **Writ Petition is disposed of.**

[S. M. MODAK, J.]