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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3386 OF 2024

Jimmy Dara Sukhia

.. Petitioner

Versus

Dina Dara Sukhia and Ors.

.. Respondents

-
- Mr. Hitesh P. Vyas, Advocate for Petitioner.
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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 06, 2024.

P.C.:

- 1.** Heard Mr. Vyas, learned Advocate for the Petitioner.
- 2.** Writ Petition takes exception to the order dated 19.01.2024 passed in Application filed below Exhibit “129” in Special Civil Suit No.430 of 1995 which is at Exhibit “H”- page No.111 of the Writ Petition.
- 3.** Application sought to recast, rather rephrase and reframe two specific issues which were already framed by the learned Trial Court below Exhibit “122”. The two issues are namely issue Nos.4 and 5. When the issues were framed under Exhibit “122”, issue Nos.4 and 5 were framed on the basis of positive assertion made by the Plaintiff in the Suit plaint, *inter alia*, with respect to Plaintiff’s case that the two Wills dated 20.06.1987 and 19.03.1998 were bogus, false, fraud and *void-ab-initio* and being executed fraudulently.

4. By virtue of the Application below Exhibit “129”, Plaintiff called upon the learned Trial Court to recast, rephrase and reframe the aforesaid twin issues by removing the burden from the Plaintiff and seeking a declaration from the Trial Court to put the burden on Defendant No.3 to prove the existence and validity of the two Wills.

5. Mr. Vyas would submit that this Application is filed in view of the fact that these twin Wills were brought on record only subsequent to the filing of the additional written statement by Defendant No.3 on 28.09.2006 and only in that view of the matter, since Defendant No.3 claimed to be the sole beneficiary under the aforesaid twin Wills, the burden needs to be cast upon Defendant No.3 to prove the validity of these two Wills.

6. The issues framed below Exhibit “122” cast the burden on the Plaintiff to prove his own assertions. It is seen that if the issue Nos.4 and 5 are proved by the Plaintiff, then having no other issues framed in order to prove the twin Wills, the Plaintiff would undoubtedly succeed.

7. In that view of the matter, the learned Trial Court while deciding the Application below Exhibit “129” has considered this probability and accordingly held that it is not necessary to recast, rephrase and reframe any of the issues as desired by the Plaintiff in view of the specific pleadings of the parties.

8. Hence, I see no reason to interfere with the order dated 19.01.2024, save and except with respect to one specific submission advanced by Mr. Vyas and that is the observations and findings recorded by the learned Trial Court in paragraph No.10 of the impugned order.

9. Mr. Vyas would submit that the twin Wills cannot be assumed to be proved by the Defendants in the Small Causes Court and he has drawn my specific attention to the statement which is recorded by the learned Trial Court in paragraph No.10 on page No.121 of the Writ Petition. He would submit that in view of the Supreme Court order dated 22.07.2021, the said statement is patently incorrect. I have perused the impugned order as also the Supreme Court order dated 22.07.2021. The learned Trial Court while deciding the original issue Nos.4 and 5 as also any submissions made by the parties thereon, after the said issues are proved by the parties, shall take into cognizance the effect of the Supreme Court order dated 22.07.2021, strictly in accordance with law.

10. The impugned order dated 19.01.2024 therefore stands sustained with the above clarification.

11. Needless to state that all contentions of the parties are expressly kept open.

12. In the event if the Plaintiff desires to make any Application before the Trial Court as is available to the Plaintiff in law, the same shall be considered on its own merits and strictly in accordance with law by the learned Trial Court.

13. With the above observations and findings, Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

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AJAY TRAMBAK
UGALMUGALE
Date: 2024.03.06
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