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

WRIT PETITION NO. 8 OF 2024

Deepak Ramanlal Shah and Anr.

.. Petitioners

Versus

Sunil Kantilal Shah and Ors.

.. Respondents

-
- Mr. Swaroop M. Karade, Advocate for Petitioners.
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 08, 2024.

P.C.:

- 1.** Heard Mr. Karade, learned Advocate for Petitioners.
- 2.** This Writ Petition takes exception to the impugned order dated 16.10.2023 passed below Exhibit “35” in Probate Petition No.14 of 2022. This Application below Exhibit “35” was filed by four third parties who admittedly have no nexus with the properties which are the subject matter of the Will of the deceased.
- 3.** Admittedly, the properties under the Will are self acquired properties of the deceased Ramanlal Deochand Shaha and his legal heirs would be entitled to the said properties under the Will. The legal heirs of the deceased sought a probate. The four third parties who have filed the impleadment Application contending that the self acquired properties of the deceased Ramanlal Deochand Shaha are

part of joint and undivided properties of the predecessor-in-title of the probate Petitioner as also the third parties and in respect of the said larger properties no partition was effected between the branches.

4. Be that as it may, the issue before the learned District Court is restricted to the extent of granting the probate whichever way it is looked at and those proceedings would not decide title of any property. That apart, if the third parties claim any right in the properties which are the subject matter of the Will as undivided and joint family property on the basis of co-parcenary rights, such right will have to be established by those parties by filing an independent Suit proceedings in the appropriate Civil Court.

5. While dealing with the Application of impleadment, the learned Trial Court has not only granted the Application, but has also commented on the ingenuity of the Will as also the mental capacity of the testator and his signature and has allowed the Application.

6. An arguable case has been made out by Mr. Karade for grant of ad-interim relief.

7. Hence, issue notice to the Respondents. Humdast permitted.

8. In addition to Court notice, Petitioners are permitted to serve a copy of the Petition and this order on the Respondents and inform

them about the next date of hearing by any permissible mode of service and file appropriate Affidavit of service with tangible proof thereof on or before the next date.

9. Respondents are directed to file their Affidavit-in-Reply within a period of three weeks from today. Rejoinder, if any, to be filed within one week thereafter.

10. The impugned order dated 16.10.2023 is expressly stayed.

11. Stand over to **05th February, 2024.**

[MILIND N. JADHAV, J.]

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