



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 553 OF 2023

(Smt. Varsha wd/o Dinkar Dongre Vs. Smt. Nirmalabai wd/o Narayan Dongre & Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri V.R. Thote, Counsel for the petitioner.
Shri R.M. Bagde, Counsel for respondent nos. 1 to 4.

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CORAM : ANIL L. PANSARE, J.
OCTOBER 7, 2024

The learned Counsel for the petitioner submits that he is not pressing for any order against respondent no.5. According to him, it is a formal party to the petition. The contesting parties are respondent nos. 1 to 4.

2] On the strength of the submission made by the learned Counsel for the petitioner, notice to respondent no.5 is dispensed with.

3] By consent, the matter is taken up for final hearing.

4] Challenge is to order dated 3/1/2022 passed below Exh. 135 by the 12th Joint Civil Judge Senior Division, Nagpur, in Special Civil Suit No. 297/2015, thereby rejecting the application filed by the petitioner – original defendant no.1 to mark exhibit the signature of the attesting witness on the Will.

5] The learned Counsel for the petitioner has restricted his argument only to the extent of marking

exhibit the signature, in the sense, he is not pressing for any orders on marking exhibit the entire Will.

6] The learned Counsel for respondent nos. 1 to 4 – original plaintiffs has no objection if the signature is marked exhibit.

7] Thus, there is no serious dispute to mark exhibit the signature of the attesting witness on the Will, namely, Bisan Khobragade (since deceased).

8] In fact, the petitioner has examined the son of Bisan Khobragade to prove his signature. His evidence is placed on record. He has deposed that his father is attesting witness to the Will and has signed below the Will. He has further deposed that he is acquainted with his father's signature and has, thus, identified the signature on the Will to be of his father.

9] In view of above, there appears no reason why should the signature of attesting witness be not exhibited. The trial Court has rejected the application stating therein that the witness has not deposed anything regarding attestation and execution of Will.

10] This finding is contrary to the evidence led by the witness, who has made two statements. One is that one Shrikrushna Vikram Dongre has executed the Will on 5/8/1982 and that his father (witness's father) has signed below the Will as attesting witness. Thereafter, the witness has categorically deposed that he is acquainted with his father's signature and has, thus, identified the same. Thus, the signature has been duly proved.

11] The order impugned is, therefore, contrary to the evidence on record. It is liable to be quashed and set aside.

12] Accordingly, the writ petition is allowed. Order dated 3/1/2022 passed below Exh. 135 by the 12th Joint Civil Judge Senior Division, Nagpur, in Special Civil Suit No. 297/2015, is quashed and set aside. The application (Exh. 135) is allowed. The signature of Shri Bisan Khobragade below the Will dated 5/8/1982 and not the Will, is marked exhibit. Appropriate exhibit number be given by the trial Court.

13] The writ petition is disposed of in above terms.

(ANIL L. PANSARE, J.)

Sumit