



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 8490/2019

Smt. Sangita w/o Madhukar Wasnik thr. her authorised agent and another .Vs.
Anil Baliram Khobragade and Ors.

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

Court's or Judge's orders

Mr. A. C. Dharmadhikari, Advocate for petitioners.
Mr. J. R. Kidilay, Advocate for respondent Nos. 1 and 3.
None for respondent No.2, though served.

CORAM : ANIL L. PANSARE, J.

DATE : 07.08.2024

Heard Mr. A. C. Dharmadhikari, learned counsel for the petitioners and Mr. J. R. Kidilay, learned counsel for the respondent Nos. 1 and 3. None appeared for respondent No.2, though served.

2. The petitioners – original plaintiffs had filed suit against the respondents – original defendants being Regular Civil Suit No. 845/2018. The petitioners sought a declaration that the Will dated 20.04.2017 executed by Late Lilabai Rangari is false, bogus, illegal, fraudulent and forged document. The Will has been scribed by respondent No.3 (original defendant No.3). The petitioners, while seeking declaration that the alleged Will is false, bogus and forged document, have averred that the respondent No.3, who is advocate by profession, has played an active role in preparing the said Will. According to the petitioners, Late Lilabai was admitted to Janta Maternity Home and Hospital, Jaripatka Nagpur in an unconscious condition for the period from 17.04.2017 to 22.04.2017. The Will has been prepared on 20.04.2017, which cannot be so as

Lilabai was in an unconscious state. This Will has been notarized before the Public Notary and, therefore, further doubt has been raised by the petitioners as to how an unconscious person could firstly sign the Will and secondly appear before the Notary.

3. Another reason to blame the respondent No.3 of forging the Will is Lilabai's signature. According to the petitioners, alphabet 'n' in the signatures of Lilabai Rangari, was never missing. Whereas, in the Will under question, the alphabet 'n' is missing in her signature.

4. According to the petitioners, the Will is a brainchild of respondent No.3. Thus, the entire blame of preparation of the Will has been made against respondent no.3 with a further allegation that this has been done to favour respondent Nos. 1 and 2.

5. Respondent No.3 filed an application before the Trial Court to delete his name on the ground that he has performed his duties as an advocate and nothing more. He averred that Lilabai was conscious and well oriented. The Will has been endorsed by two witnesses as well. Further, no relief has been sought against him. Therefore, his presence is not necessary in the suit. The Trial Court found merit in the submissions and thus allowed the application, which is under challenge.

6. It is worth mentioning here that subsequent to respondent No.3 filing aforesaid application, the petitioners filed an application to amend the plaint and thus to add prayer that the case of respondent No.3 be referred to the Bar Council of Maharashtra and Goa, Mumbai for punishment for

misconduct. This application has been rejected by the Trial Court on the point that the appropriate remedy is to lodge proceeding before the Bar Council of Maharashtra and Goa, Mumbai and that Civil Court is not empowered to deal with the dispute. This order is also under challenge.

7. The most important, amongst the various events that occurred before the Trial Court is the application filed by the petitioners to place on record Doctor's certificate dated 25.05.2017. The certificate has been issued by the Doctor of Janta Maternity Home and Hospital, Jaripatka which reads that Mrs. Leela B. Rangari was admitted on 18.04.2017 with acute lowerback pain with degenerative spine. She was conscious and oriented till 21.4.2017 morning after which she developed septicemic shock and was shifted to higher centre in evening on 21.04.2017.

8. In the application, that was filed to place on record the aforesaid document, the petitioners have averred that this document is being filed in support of their claim. Thus, the petitioners are relying upon this doctor's certificate in support of their claim. This document, however, will completely destroy the petitioner's theory that Lilabai was unconscious for the period from 17.04.2017 till 22.04.2017. Rather, the petitioners' own document now shows that on 20.04.2017, the date on which the Will was scribed, Lilabai was conscious and oriented. Thus, apparently, the petitioners have levelled false allegations against the respondent No.3.

9. In the above backdrop, the Will having been notarized will have some significance of its execution. The petitioners

however, in a way, have blamed the Notary Public as well, in the sense the petitioners have suggested that the Notary Public is also involved in the fraud because the Will has been notarized by a person who was in an unconscious condition. The petitioners have then left no stone unturned to blame respondent No.3.

10. It is said that in a fabricated story, there is always an evidence that stems out in support of the truth. The petitioners' own document falsified their theory of respondent No.3 indulging into any fraudulent act. He has been made party to the suit only on the count that serious allegations have been made against him as regards his role in preparation of false claim and should not be condemned without giving opportunity of hearing, otherwise no relief is sought against him. Having found no substance in the aforesaid allegation, the presence of respondent No.3 is thus not necessary, particularly when no relief has been sought against him.

11. There is yet another angle to the story. The petitioners have, on 20.01.2018, lodged a complaint against the respondents with Jaripatka Police Station blaming them of preparing forged Will. The counsel for respondent No.3 submits that the police have not taken cognizance of the complaint. However, the petitioners have averred in the plaint that under respondent No.3's pressure the FIR was not registered. When inquired as to whether petitioners have pursued the remedy against the inaction of police, the counsel for the petitioners submits that he has no instructions on this point.

12. Thus, prima facie and considering the date on which the complaint was lodged viz. after about nine months of commission of alleged forgery of Will, there is every reason to believe that the complaint is nothing but an attempt to justify the stand taken by the petitioners and to create further evidence against respondent No.3. There is another reason to draw such an inference. The petitioners chose to file a complaint only against the respondents and not against the witnesses to the will or the doctor who has certified that Lilabai was, at the relevant time, in conscious state of mind. If at all the petitioners were firm and had personal knowledge of unconsciousness of Lilabai, they ought to have lodged complaint against the witnesses to the Will as also the doctor who certified that Lilabai was in conscious state of mind. No reason has been assigned in the complaint as to why leniency is shown against the witnesses and doctor and why respondent No.3 has been selectively targeted.

13. Be that as it may, the petitioners' have exposed themselves by filing document which completely washed out their theory of respondent No.3 being party to the alleged forgery.

14. The presence of respondent No.3 is thus not at all necessary. The Trial Court has rightly dealt with the application filed by the respondent No.3. The petitioners have unnecessarily dragged the matter further. The petition is accordingly dismissed with costs of Rs.50,000/- to be paid by the petitioners to the respondent No.3 within seven working days.

15. Needless to say that the observations made hereinabove are in context with the application filed by the

respondent No.3 to delete his name. The issue of genuineness of Will, considering the fact that it was made two days prior to testator's death shall be decided by the Trial Court on its own merit without getting influenced by this order. All questions, except that Lilabai was unconscious, are kept open.

16. The writ petition is disposed of in terms of above.

(Anil L. Pansare, J.)

Kahale