



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

38 CRA NO. 24 OF 2025

NASEERUDDIN IMAM MUTAWALLI

VERSUS

MAHARASHTRA STATE BOARD OF WAKFS THROUGH ITS CHIEF
EXECUTIVE OFFICER AND ANR.

...

Advocate for the Petitioner : Mr. Kazi S. S.

Advocate for Respondent No. 1 : Mr. Najam E.Deshmukh

Advocate for Respondent No. 2 : Mr. Ravindra Nirmal

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CORAM : SHAILESH P BRAHME, J.

DATE : 14.11.2025

PER COURT :

Heard both sides finally.

2. The applicant is aggrieved by the order dated 11.10.2024 passed below Exh. 89 permitting the respondent no. 2-plaintiff to not press earlier application (Exh. 88) and to file additional affidavit of evidence with liberty to the applicant to conduct cross-examination.

3. The learned counsel for the applicant submits that already there is a reference of will in the plaint with a specific pleading that a copy of it has been filed on record. Respondent no. 2 had filed affidavit in lieu of examination in chief and faced cross-examination. Two more witnesses were examined by him. The application (Exh. 89) seeking permission for additional affidavit is misconceived and causing great prejudice. It is submitted that when respondent no. 2 was armed with the will, there is no explanation as to why again additional affidavit is required. It is submitted that respondent no. 2 is protracting the matter as he has no right, title or interest in the subject matter. Learned counsel Mr. Kazi relied on the

judgment of the Supreme Court in the matter of **Ram Rati Vs. Mange Ram; (2016) 11 Supreme Court Cases 296**, to buttress that it is impermissible to recall the witness.

4. Per contra, learned counsel submits that additional affidavit is necessary to clarify the contents of the will upon which his claim is founded. It is submitted that no prejudice would be caused if the permission is granted because already there is a photo copy on record. It is further submitted that contents of the will needs to be incorporated.

4. Respondent no. 2 has filed Wakf Suit No. 117/2014 for perpetual injunction claiming to be hereditary Mutawalli. The parties have rival claim for the administration of the office of the Dargah Hazrat Peet Khawaja Dawood (Rah) Akkalkot. Plaintiff's claim is founded on will. It is contested by applicant on the ground that no such will existed and trust has also already been registered.

5. Respondent no. 2 has already pleaded in para no. 3 about the cause of action of the will dated 29.09.1919 and it was placed on record. Both the sides are not disputing that photo copy of the will is already on record. It has also not been disputed that respondent no. 2-plaintiff is not soliciting to produce any other document or original copy of the will. The purport of his applications Exh. 88 an 89 is to incorporate contents of the will by way of additional affidavit.

6. It is trite law that for proving a document, the procedure contemplated by the Evidence Act needs to be followed by leading primary, or if the case is made out, the secondary evidence. Photo copy of the will has not been accepted in evidence so far. Already plaintiff was cross-examined and his witnesses were also examined. He should have taken care of incorporating the contents on earlier occasion. The suit is of 2014. Learned counsel Mr. Kazi is right in contending that further adjournment for filing the additional affidavit would delay the proceedings.

7. The matter is at trial stage. I cannot be oblivious of the fact that parties need to be given fullest opportunity to adduce the evidence. I find that considering the above factual aspect, as a last indulgence it is desirable to permit the plaintiff to file on record additional evidence, albeit on certain terms.

8. The Civil Revision Application is disposed of and impugned order is confirmed. However, respondent no. 2 shall pay costs of Rs. 10,000/- (Rs. Ten Thousand only) to the applicant within a period of four weeks or deposit it before the Tribunal within a period of four weeks.

9. It is clarified that permission to file additional affidavit is granted to incorporate the contents or translated contents of the will in the affidavit. Parties shall cooperate the Tribunal for early disposal of the suit.

(SHAILESH P. BRAHME, J.)

mkd/-