



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

925 WRIT PETITION NO. 2643 OF 2024

GANESH ANNASAHEB DARANDALE
VERSUS
RAJENDRA ANNASAHEB DARANDALE AND OTHERS

...
Advocate for Petitioner : Mr. Shinde Chandrakant K.

...
CORAM : ROHIT W. JOSHI, J.

DATE : 15th JULY, 2025

P.C.:

1. The petitioner is plaintiff in Regular Civil Suit No. 348 of 2013, which is dismissed vide judgment and decree dated 30.03.2016, passed by the learned 2nd Joint Civil Judge, Junior Division, Shrirampur. The said suit was filed for seeking a declaration that will dated 16.06.1994, executed by one Sakhubai is a false, forged and fraudulent document.

2. The petitioner has filed an appeal being Regular Civil Appeal No. 16/2016 which is pending on the file of the learned Adhoc District Judge – 1, Shrirampur. It will be pertinent to mention that the petitioner has filed two other suits being Regular Civil Suit No. 121/2015 and 123/2015, for partition and separate possession of certain immovable properties. Both the suits are partly decreed in favour of the petitioner.

3. The respondents have filed two separate appeals challenging the said decrees for partition being Regular Civil Appeal No. 22/2019 and Regular Civil Appeal No. 20/2019. Apart from this, one Hirabai Ghogare who is daughter of Sakhubai also filed a suit for partition and

separate possession registered as RCS No. 367/2013 which came to be decreed on 06.06.2019. Respondents have filed another appeal being Regular Civil Appeal No. 21/2019, challenging the said decree for partition and separate possession.

4. It is the case of the petitioner that after filing of the appeals, the respondents came across a decree dated 30.04.1968 in Civil Suit No. 36/1966. According to this decree, the testator Sakhubai had only 1/4th share in the property bequeathed by way her under the disputed will dated 16.06.1994. Accordingly, the petitioner filed applications for amendment of plaint in RCS No. 121/2015 and 123/2015 which are suits for partition and separate possession filed by him. Learned First Appellate Court has allowed the said applications.

5. As regards the present petition which arises out of RCA No. 16/2016 similar application was made in the said appeal. However, vide order dated 21.06.2023, the learned First Appellate Court has rejected the application for amendment. This order rejecting the application for amendment at exhibit 20 filed in RCA No. 16/2016 is subject matter of challenge in the present petition.

6. Before dealing with the contentions raised by the learned Advocate for the petitioner, it will be pertinent to state that according to learned Advocate for the petitioner all the four appeals are being heard together by the same Court. Learned Appellate Court has allowed application for amendment in suits for partition filed by the present plaintiff as well as suit for partition by Hirabai Ghogare daughter of Sakhubai. However, so far as the present petition is concerned, it arises out of the suit for declaration that will dated 16.06.1994, executed by Sakhubai is a false and forged document. Apart from this declaration, there is no other prayer in the plaint. Learned First Appellate Court was of the opinion that the extent of share in the properties held by

Sakhubai will not be relevant for adjudication of the appeal since the genuineness of appeal was the only subject matter of the suit. It is, therefore, held that the application for amendment was not relevant for adjudication of the appeal.

7. It will be pertinent to mention that the petitioner / plaintiff who is the appellant does not intend to amend the prayer clause in the plaint as is apparent from the application for amendment. Thus the only point that falls for consideration in RCA No. 16/2016 is as to whether Sakhubai had executed the disputed will dated 16.06.1994 and whether execution and attestation thereof is in accordance with law. The share of Sakhubai in the property which are bequeathed under the will dated 16.06.1994, will have no bearing on the outcome of the suit since the suit is not a suit for partition and separate possession or declaration of title over properties held by Sakhubai. The only prayer in the suit as stated above is that the will dated 16.06.1994, purportedly executed by Sakhubai is a false, forged and fabricated document. Having regard to the prayer clause in the plaint in the considered opinion of this Court, learned First Appellate Court has not committed any error in rejecting the application for amendment of plaint filed in RCA No. 16/2016. Needless to mention that the interest of the petitioner is adequately protected since the application for amendment of plaint in appeal arising out of the suits for partition are allowed by the learned First Appellate Court.

8. In view of the reasons mentioned above, in my opinion, no case for interference is made out in the present petition. The petition is dismissed with no order as to costs.

[ROHIT W. JOSHI J.]