

Jvs.

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

WRIT PETITION NO. 3808 OF 2019

JAYANT
VISHWANATH
SALUNKE

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JAYANT VISHWANATH
SALUNKE
Date: 2025.07.30
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Shankar Pimpalu Gholap

} **Petitioner**

versus

Santosh Vasant Jadhav & Anr.

} **Respondents**

Mr. Nikhil N. Wadikar with Mr. Kastur P. Patil i/b. Mr. Nandu Pawar for petitioner.

Mr. Vaibhav R. Gaikwad with Ms. Pradnya C. Solanki for respondent no. 1.

CORAM: ALOK ARADHE, CJ.

DATE: JULY 30, 2025

ORAL ORDER:

1. In this petition under Article 227 of the Constitution of India, the petitioner has assailed the validity of the order dated 25th October 2018 passed by the Trial Court, by which, the application preferred by the petitioner seeking his substitution in place of the original plaintiff, on the basis of a will dated 19th October 2014 executed by the original plaintiff, has been rejected.

2. Facts giving rise to filing of the writ petition, briefly stated, are that the original plaintiff filed Special Civil Suit No. 110 of 2012 seeking relief of declaration and injunction. After institution of the suit, the original plaintiff expired on 8th January 2018. Therefore, the petitioner filed an application seeking leave of the Trial Court to continue the suit on the basis of the will.

3. The Trial Court, by an order dated 25th October 2018, has dismissed the aforesaid application, *inter alia*, on the ground that four legal heirs, namely, two sons and two daughters of the original plaintiff are alive and without giving notice to them, the application seeking leave of the Court to continue the proceedings cannot be considered. Hence this petition.

4. I have heard learned counsel for the parties at length and perused the record.

5. The Trial Court ought to have appreciated that the permission to continue the proceedings was sought on the basis of the will dated 19th October 2014. The Trial Court has not examined the validity of the will. In case the petitioner is granted leave to continue the proceedings, which is only for continuation of the suit, the petitioner/plaintiff is still required to prove the will executed in his favour in accordance with law. The inquiry which is held for the purpose of the continuation of the proceedings is summary in nature. The Trial Court has completely failed to appreciate the aforesaid aspect of the matter.

6. The impugned order, therefore, suffers from an error apparent on the face of the record and exhibits lack of application of mind, which is hereby quashed and set aside.

7. In the result, the writ petition is allowed.

8. Let a copy of this order be forwarded to the Trial Court forthwith.

(CHIEF JUSTICE)