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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9123 OF 2022

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Vijaysinh Govindrao Nimbalkar

Age: 67 yrs., Occ: Agri.,

R/o. C-5/304, Bramha Avenue,

Kondhwa, Pune-411 048

... Petitioner

V/s.

1 Amarsinh Govindrao Nimbalkar,

Age: 71 yrs., Occ: Medical Doctor,

R/o. Flat No.A/26, Mercantile Bank

Colony, Natwar Nagar Lane 5,

Jogeshwari, Mumbai 400 060

2 Aidan Caine,

Age: 37 yrs., Occ: Service,

3 Anita Vilas Mahadik,

Age: 35 yrs., Occ: Service,

Both r/o.41-50, 78 Street, Apartment

No.404, Elmhurst USA 11373

... Respondents

Mr. Vishwanath S. Talkute with Mahesh R. Bhosale,
Pratik Bhojane and S. Patil for the petitioner.

*Mr. Amol Joshi (through V.C.) i/b. Mr. Jaynendra
Navlani, Advocate for Respondent No.1.*

CORAM : S. G. CHAPALGAONKAR, J.

DATED : NOVEMBER 4, 2025

JUDGMENT.:

1. Petitioner takes exception to order dated 16th February 2022 passed by learned District Judge, Malshiras, whereby learned District Judge rejected the application filed by respondents under Section 10 of Code of Civil Procedure below Exhibit 32; however, directed the parties to argue appeal finally, excluding the Will in question, with liberty to parties to adjudicate their rights in respect of the Will in the probate petition pending before this Court.

2. Petitioner herein is original Defendant in Regular Civil Suit No. 872 of 2001, which was instituted by Respondent No. 1 before learned Civil Judge, Junior Division, Malshiras, for partition and separate possession of suit properties. Petitioner filed a counter-claim along with the written statement, seeking to include a apartment situated at Jogeshwari, Mumbai, as a suit property and to grant a decree of partition as per shares of the respective parties. It was contention of the Petitioner that said flat had been purchased by father out of joint family corpus, therefore, has the status of joint family property. However, respondent filed a written statement to counter-claim, contending that Govindrao Nimbalkar, i.e., father of Plaintiff and Defendant, had purchased apartment at

Jogeshwari out of his own income. It was his self-acquired property, which has been bequeathed by him under a Will dated 1st August 1998 in favour of Respondent–Plaintiff.

3. Learned Trial Court decreed the suit; at the same time, rejected the counter-claim of the Petitioner, observing that Petitioner failed to prove that flat in question was a joint family property. Aggrieved Petitioner has filed Regular Civil Appeal No. 57 of 2016 before learned District Judge, Malshiras. The Appeal is now reached at the stage of final hearing. At this stage, Respondent No. 1 filed an application below Exhibit 32 under Section 10 of Civil Procedure Code, seeking a stay to proceeding of appeal, till decision of Probate Petition No. 1543 of 2015 pending before this Court in relation to alleged Will.

4. Learned District Judge, after considering rival submissions, rejected the application, being an attempt to prolong hearing of appeal. However, put a rider that appeal shall be argued by the parties excluding Will in question, as the issue is pending in probate proceeding before the High Court.

5. Mr. Talkute, learned Advocate appearing for Petitioner, vehemently submits that restriction imposed by learned District

Judge to argue the appeal, except on the point of Will in question, is unjustified. According to him, the Trial Court has already observed that the Plaintiff failed to prove validity of Will dated 1st August 1998, accordingly answered Issue No. 1B in negative, holding that Plaintiff does not acquire ownership of suit property under the Will dated 1st August 1998. According to him, once such a finding has been recorded by Trial Court, the Appellate Court could not have imposed restrictions to confine appellant's submissions in relation to Will in question merely on the ground that probate proceeding is pending. He would submit that Respondent No. 1 has filed probate proceeding in the year 2015 but failed to take further steps towards disposal of same. He, therefore, urges that objectionable part of the impugned order be quashed and set aside.

6. Mr. Navlani, learned Advocate appearing for Respondent No. 1, however, supports the impugned order, contending that property under Will is situated at Jogeshwari; therefore, probate is necessary. Proceedings to that effect is already initiated before High Court (Original Side) in Probate Petition No. 1543 of 2015. Learned Civil Court has no jurisdiction to comment upon the

validity of Will in respect of property situated within the jurisdiction of Mumbai. Learned Appellate Court is, therefore, justified in directing parties to argue the appeal except on the point of Will.

7. Having considered the submissions advanced, it cannot be disputed that in a suit for partition and separate possession instituted by Respondents, present Petitioner/Defendant filed a counter-claim seeking a decree of partition and separate possession in respect of the flat purchased by Govindrao Nimbalkar, situated at Jogeshwari, Mumbai. Respondents claims that it was the self-acquired property of Govindrao; hence, he bequeathed the same in favour of Respondent No. 1 under a registered Will. Admittedly, Probate Petition No. 1543 of 2015 is pending before original side of this Court in relation to Will in question.

8. The probate jurisdiction vests with City Civil Court, Mumbai, or Original Side of this Court, in relation to properties situated at Mumbai. Further, probate is necessary for such a Will. There is no dispute regarding aforesaid legal position.

9. It is true that Regular Civil Appeal No. 12 of 2013 is pending

before learned District Judge, Malshiras, wherein rival claims have been raised by parties to the suit. One of the issues is whether the flat in question was self-acquired property of Govindrao Nimbalkar or it was acquired by him out of the joint family corpus.

10. The issue in this regard can be decided by Civil Court. If Civil Court comes to conclusion that the flat in question was self-acquired property of Govindrao Nimbalkar and he was entitled to bequeath it under Will, then the rights of the parties would depend upon result of probate proceedings. In this background, learned Appellate Court is justified in directing parties to proceed further in the appeal with a rider that issue which is the subject matter of probate proceedings shall not be argued in appeal and kept open for decision of probate Court. No jurisdictional error can be found in the approach of learned District Judge while restricting the conspectus of arguments to be advanced by the parties in Appeal.

11. Hence, writ petition sans merit, hence rejected.

12. Pending interlocutory application(s), if any, stand disposed of.

(S. G. CHAPALGAONKAR, J.)

Note:- This judgment is modified as per order dated 19th December 2025 to record appearance. Rest of the order remains unaltered. Modified portion is shown in italicize.