

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11059 OF 2023

Shantinath Babaso Patil

...Petitioner

VS.

Tatyasaheb Malgonda Yalgonda and Others

...Respondents

Mr. Bhushan Raut, for the Petitioner.

VISHAL
SUBHASH
PAREKAR

Digitally signed
by VISHAL
SUBHASH
PAREKAR
Date: 2025.02.07
18:34:34 +0530

CORAM : N. J. JAMADAR, J.

DATE : FEBRUARY 5, 2025

P.C:

1. Heard the learned counsel for the parties.
2. This petition under Article 227 of the Constitution of India calls in question the legality, propriety and correctness of an order passed by learned Civil Judge, Sangli whereby an Application (Exh.44) preferred by the petitioner seeking production of the Will, by the defendants, purportedly under Order XI Rule 12 and 14 of the Code of Civil Procedure, 1908 came to be rejected.
3. The petitioner has instituted the suit seeking declaration that the purported Will of the Sundarabai Khot, referred to in Mutation Entry No. 8543, propounded by defendants Nos. 1 and 2, is false, illegal, void and does not bind the interest of the plaintiff in the suit property and for the consequential relief of injunction. In the said suit, the plaintiff filed an application seeking an order for production of the said Will by the defendants No. 1 and 2. It was

asserted that the said Will is in the custody of the defendants.

4. The defendants resisted the application contending that the Will was executed on 29th June, 1995; the said Will has been acted upon and after 27 years of the execution of the said Will the defendants could not trace it despite diligent search. Therefore, defendant No. 1 is not in a position to produce the Will.

5. By the impugned order, the learned Civil Judge rejected the application observing inter alia, that the production of document can only be ordered, if the party is shown to be in possession of the documents, and since the defendants have denied that they are in a possession of the said Will, order for production cannot be passed.

6. Mr. Raut, the learned counsel for the petitioner, submitted that the trial Court could not have straightaway rejected the application. Since the mutation entry No. 8543 has been certified on the basis of the said Will, propounded by the defendants, the defendants ought to have been called upon to produce said Will as they are indisputably the beneficiaries thereunder.

7. At the outset, it is necessary to note that the plaintiffs are seeking a declaration as regards to the Will purportedly executed by Sundarabai, without producing a copy of the said Will. Prima facie, it appears that declaration as to the falsity and illegality of the Will is sought without having had the opportunity to peruse the

Will.

8. Be that as it may, the fact remains that the defendants contend that they are now not in possession of the said Will. In that view of the matter, the trial Court was justified in rejecting the application, seeking production of the Will by the defendants. To order production of documents under Order 11 Rule 14, it must be shown that the document is in possession or power of the concerned party.

9. The rejection of the said application may not, however, preclude the plaintiff from resorting to the other modes of bringing the said Will or its copy on record, either by seeking discovery of the said document on oath, under Order XI Rule 12, or leading secondary evidence thereof, or otherwise establish the fact that the said Will was either not executed by Sundarabai or it was illegal and invalid.

10. Keeping open the said liberty, the petition stands dismissed.

(N. J. JAMADAR, J.)