

Arun Sankpal

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3455 OF 2024

Dilip Shamrao Doiphode

..Petitioner

Versus

Rajashri Shamrao Doiphode & Ors

...Respondents

Mr. Dilip Bodake, for the Petitioner.

CORAM: N. J. JAMADAR, J.

DATED : 13th FEBRUARY 2025

P.C.:

- 1.** Heard learned Counsel for the Petitioner.
- 2.** The challenge in this Petition is to an Order dated 27th November 2023 passed by the learned Civil Judge, Senior Division, Vaduj, on an Application (Exhibit “14”) to stay the probate proceeding, being Probate Application No. 5 of 2022.
- 3.** The Petitioner instituted a Suit being RCS No. 200 of 2015 for partition and separate possession of his share in the suit property against Shamrao Doiphode, his father, and others. During the pendency of the Suit, Shamrao Doiphode executed a Will and bequathed the properties to his daughter Rajashri, Defendant No.7. On the strength of

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RAMCHANDRA
SANKPAL

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said Will, Rajashri has filed a Petition for grant of Probate, being Probate Application No. 5 of 2022, before the Court of CJSD, Vaduj.

4. The Petitioner preferred an Application purportedly under Section 10 of the Code of Civil Procedure 1908 (“the Code”) to stay the proceedings in the Probate Application No. 5 of 2022.

5. By the impugned order the learned Civil Judge was persuaded to reject the Application observing that the two proceedings are distinct. By an Order dated 13th March 2024 notices were issued to the Respondents. Despite service of notices none has appeared for Respondent Nos. 1, 2, 4 and 6.

6. Mr. Bodake, learned Counsel for the Petitioner, submitted that identical questions would arise for determination in both the proceedings. Since a Suit for partition has already been filed, wherein the Petitioner has also assailed the legality and validity of the Will, the probate proceedings are required to be stayed.

7. I am unable to persuade myself to agree with the submission of Mr. Bodake. The remit of the probate proceeding is limited to the determination of valid execution and attestation of the Will. Question of title to the property is alien to the enquiry in the Probate proceeding. Moreover, the said Will was executed during pendency of the instant suit. Whether the Defendant Shamrao Doiphode had the dispositive capacity to bequeath the properties which have purportedly been

bequeathed to Rajashri, Defendant No.7 would be a matter for adjudication. In these circumstances, the proceeding in the Probate Application cannot be stayed.

8. However, since there is a possibility of conflicting findings with regard to the Will, it would be expedient in the interest of justice to transfer RCS No. 200 of 2015 pending on the file of CJJD, Vaduj to the Court of CJSD, Vaduj, for hearing and final disposal in accordance with law, simultaneously with the Probate Application No. 5 of 2022.

9. Petition thus stands disposed.

10. RCS No. 200 of 2015 pending on the file of CJJD, Vaduj shall stands transferred to the Court of CJSD, Vaduj, for hearing and final disposal in accordance with law, as expeditiously as possible

[N. J. JAMADAR, J.]