IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2545 OF 2025

SANTOSH SUBHASH KULKARNI

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Date: 2025.03.01 14:38:34 +0530

Changdev Shripati Khade and anr. ...Petitioners

Versus

Kamal Nayaku More and ors. ...Respondents

Mr. P. D. Dalvi, for the Petitioners.

CORAM: N. J. JAMADAR, J.
DATED: 25th FEBRUARY, 2025

Order:-

1. Heard the learned Counsel for the petitioners.

2. The challenge in this petition is to an order dated 11th November, 2024 passed by the learned Civil Judge on an application (Exhibit-114) seeking admission and exhibition of a registered partition deed which came to be executed on 23rd November, 2000.

3. The learned Counsel for the petitioners submitted that there is no dispute about the execution of the said instrument. It was produced by defendant No.3 after a notice was given under Section 66 of the Evidence Act. It was, therefore, necessary to mark the said registered document in evidence.

4. The learned Civil Judge was of the view that defendant Nos.1 and 2 whose evidence was then being recorded could take steps to prove the said document in evidence and the fact that a photostat copy of the said document was already marked as Exhibit-66 was not a justifiable reason to directly mark the registered partition deed in evidence.

5. Mr. Dalvi, the learned Counsel for the petitioners, submitted that the plaintiffs evidence is over and, after the passing of the impugned order, the evidence of defendant Nos.1 and 2 has also been recorded. Therefore, the plaintiff faces constraints in getting the said document proved in evidence.

6. Merely because a document is registered does not dispense with the proof of the execution and contents of such document. The plaintiff could have taken steps to prove the said document in evidence either during the course of the examination of the defendants witness or examining any other executant to the said document. The impugned order thus cannot be interfered with.

7. Reserving liberty to the petitioners to prove the said document either by leading evidence or by recalling one of the executants, the petition stands dismissed.

8. In the event such an application is filed, the learned Civil Judge shall decide the same on its own merits and in accordance with law.

[N. J. JAMADAR, J.]