



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 345 of 2025

Vibhash S/o Vitthalrao Wankhade and anr. ..vs.. Rajendra Vitthalrao Wankhade and ors.]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. C. A. Babrekar, Advocate for the petitioners

CORAM : ANIL L. PANSARE J.

DATED : 21-01-2025

Heard.

2. The trial Court vide impugned order dated 11-12-2024 permitted the respondent no. 1 (original defendant no. 1) to lead secondary evidence in respect of Will dated 27-7-1995.

3. The respondent no. 1 filed application to lead secondary evidence on the ground that Will has been lost.

4. According to the petitioners, this fact ought to have been mentioned in the affidavit of evidence and further the respondent no. 1 ought to have shown that he has made efforts to trace out the original Will. The petitioners further state that the respondent no. 1 has not even filed complaint of lost Will.

5. The trial Court, by relying upon the judgment of this Court in the case of *Parasanbai Dhanraj Jain Vs. Sunanda Madhukar Jadhav [(2018) 1 Mh.L.J. 788]*, held that Court cannot refuse permission and further cannot insist for filing application to lead secondary evidence. What is required to be considered is the reasons assigned by the party for its inability to produce primary evidence.

6. In the present case, the respondent no. 1 has come up with a case that Will has been lost. He has produced the certified copy of registered Will, meaning thereby that the Will was registered.

7. In the circumstances, there appears substance in the case put up by respondent no. 1 because he will not get any advantage by not producing the original Will, if available. The order appears to be in tune with the provisions of law. No interference is called for in supervisory jurisdiction under Article 227 of the Constitution. The petition is dismissed with no order as to costs.

8. Copy of order be served upon the trial Court.

(Anil L. Pansare, J.)