



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.3050/2024

Madhukar s/o Keshavrao Ganguwar (Since Deceased Through Legal Heirs)
Smt. Mandakini wd/o Madhukar Ganguwar and others

...Versus...

Sudhakar s/o Keshavrao Ganguwar (Since deceased through Legal Heirs)
Smt. Veena Sudhakar Ganguwar and others

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

Court's or Judge's orders

Mr. M.P. Khajanchi, Advocate for petitioners
Mr. A.M. Chandekar, Advocate for respondents

CORAM : SACHIN S. DESHMUKH, J.
DATE : 20/08/2025

1. The petitioner raises an exception to the order rendered by the Civil Judge Senior Division, rejecting the application presented by the petitioner seeking examination of witness to Will Deed of the year 1985.
2. The petitioner is the original defendant in Regular Civil Suit of the year 1994 for partition, cancellation of Sale Deed and for permanent injunction, in relation to the suit property. The suit is subsequently re-numbered in the year 2012. As a matter of fact, consequent completion of the pleadings, the trial Court framed the issues in the year 2003 and thereafter, issues were recasted in the year 2005 and 2013 respectively.
3. At the time of recasting the issues the additional issue in relation to the Will Deed was specifically framed by the trial Court and it is thereafter the parties to the litigation have proceeded to adduce the evidence and eventually the suit

has reached the stage of final hearing. As a matter of fact the plaintiff has completed the arguments. At that juncture the present petitioner has presented an application for permission to examine the attesting witnesses of the Will Deed. While submitting the application it was submitted that the petitioner was not aware of framing of additional issue No.2-A and at the time of hearing only the petitioner realized the framing of said issue. As such, requested to permit the examination of the said witnesses to the Will Deed.

4. The plaintiff vehemently opposed the said application, by submitting that the issue is recasted in the year, 2005 and 2013, therefore, it is not open for the petitioner to contend that the petitioner was not aware of the said issue. Having already examined the necessary witnesses now, it is not open for the petitioner to contend that inadvertently attesting witnesses to the Will Deed were not examined, when the plaintiff has advanced final arguments. The attempt of the petitioner is to fill-up lacunae and same cannot be permitted at the stage of the final argument.

5. The learned Trial Court taking into account the fact that necessary issues were already framed, the parties to the litigation have concluded their evidence and the plaintiff has also concluded final arguments, it is at the juncture of advancing the argument finally by this defendant, the application is presented. The trial Court has taken into account the provisions of Order XVIII Rule 17-A of the Code of Civil Procedure, 1908 which facilitates the production of evidence, which is not previously known or could not be produced despite due diligence. However, taking into account the fact

that the issue was already recasted, burden was casted upon the defendant. Thereafter, the suit has proceeded further and reached to the stage of final arguments and in the process the plaintiff has concluded final arguments, as such, holding that no party can be allowed to fill-up lacunae of its own wrong at a belated stage of the proceedings which would cause prejudice to the other side, as such, rejected the application.

6. Raising exception to the order rejecting application for adducing evidence of witnesses to the Will Deed, the petitioner has presented this petition under Article 227 of the Constitution of India.

7. It is a matter of record that the suit is of the year 1994 and is renumbered in the year 2012. Considering pendency of the suit for more than 3 decades endeavor of the petitioner appears to protract the proceedings under one or other pretext which deserves to be deprecated. Nevertheless, the petitioner was fully aware of framing of an additional issue pursuant to which burden is casted upon the petitioner, as such, petitioner has chosen to proceed with the suit by adducing evidence.

8. Eventually, stage of evidence is also over and the plaintiff has also concluded final arguments and it is at the juncture of advancing final arguments, the defendant has presented this application claiming ignorance of framing of additional issue.

9. It is not really open for the litigating sides to fill-up lacunae of its own wrong at a belated stage and considering, the scope and ambit of Order XVIII Rule 17-A of the Code of Civil Procedure, 1908 which unequivocally

permits the production of evidence which is not previously known to the litigating sides or same could not be produced despite due diligence. The case of the petitioner does not fall in either of the eventuality, since, the petitioner was well aware of the Will is of the year 1985. Admittedly, when the plaintiff has concluded the arguments at a final hearing stage and it was defendant to advance the arguments for final hearing of suit, the application is presented. The attempt of the petitioner has to be regarded as deploying dilatory tactics so as to further prolong the decision of the suit. As the suit is of the year 1994, the plaintiff is litigating for more than three decades. Resultantly, no interference is warranted in the well reasoned order rendered by the learned Trial Court. As such, it is a fit case where cost will have to be mulcted upon the petitioner which is quantified to Rs.10,000/- (Rupees Ten Thousand Only) to be paid to the plaintiff to be deposited with trial Court by the petitioner. Considering, that the suit is of the year 1994, it would be appropriate to direct the concerned Court to make an endeavor to decide the suit within six months from today. The petitioner shall deposit the cost with the trial Court within a period of two weeks from today. The Writ Petition is dismissed.

(SACHIN S. DESHMUKH, J.)

Privel