

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2983 OF 2026

Prayagbai Deorao Gaikwad

VERSUS

Kakasaheb Piraji Thombare Deceased Thr Lr Rukmanbai Kakasaheb
Thombre And Others

...

Advocate for the Petitioner : Mr. Ramdas B. Singare Patil & Mr.
Surendra V. Suryawanshi

...

CORAM : S. G. CHAPALGAONKAR, J.

DATED : MARCH 23, 2026

PER COURT :-

1. Present petition raises challenge to order dated 17.01.2016 passed by Joint Civil Judge Senior Division, Aurangabad below Exhibit-35 in R.C.S. No.129 of 2018 thereby deleting issue no.4 framed at Exhibit-34.

2. The petitioner is original defendant in R.C.S. No.129 of 2018 pending before Civil Judge Senior Division, Aurangabad. The respondent/plaintiff instituted suit seeking declaration that will executed by Salubai dated 07.09.2009 is illegal, false, *void ab initio* and nullity and further sought decree of perpetual injunction against petitioner/defendant from taking benefit or giving effect to will and probate issued vide MARJI No.293 of 2013. The learned Trial Court after considering rival contentions, framed issues at Exhibit-34. Issue no.1 cast burden upon plaintiff to prove that he is legal heir of deceased Salubai. Issue no.2 cast burden upon defendant to prove

that Will Deed dated 07.09.2009 was executed by late Salubai Parbhat Gaikwad. Issue no.3 cast burden upon defendant to prove that late Salubai Parbhat Gaikwad was in a fit state of body and mind at the time of executing Will Deed dated 07.09.2009. Issue no.5 cast burden upon plaintiff to seek entitlement for relief of declaration as prayed. Issue no.6 cast burden upon plaintiff to prove his entitlement to seek relief of perpetual injunction as prayed. Issue no.4 reads thus :

“4) Does the plaintiff prove that the Will Deed executed by late Salubai Parbhat Gaikwad on 07.09.2009 is illegal, false and null and void ?”

3. The respondent/plaintiff filed an application below Exhibit-35 seeking to delete issue no.4 contending that no burden be shifted upon plaintiff to prove that will executed by Salubai is illegal and false. The Trial Court rightly observed that issue nos.2, 3 and 5 are co-related to each other. In fact, once there is probate in favour of petitioner in respect of will, it is for plaintiff to prove his entitlement to seek declaration as prayed. Therefore, although issue no.4 is directed to be deleted, plaintiff will have to discharge his burden to seek relief of declaration against order passed in MARJI No.293 of 2013. In that view of matter, this Court finds that no prejudice is caused to petitioner by impugned order.

4. In result, this Court do not find any reason to invoke writ jurisdiction and entertain challenge raised. Writ Petition stands rejected.

(S.G. CHAPALGAONKAR, J.)

Mujaheed//