

MHLA050006602018



Order below Exh.69 in Spl.C.S.No.13/2018
[Vijaya & Ors. Vs. Bhagwat & Ors.]

The plaintiff has filed the application requesting to allow her to lead secondary evidence on the will deed. According to her, the original will deed is in the possession of the defendants. She had moved an application below Exh.65 to issue direction to the defendants to submit original will, which was allowed and defendant Nos.1 to 4 were directed to submit the original document of will. As on today, such document is not produced by the defendants. Therefore, it is prayed that, the plaintiff may be allowed to lead secondary evidence on the will.

2. The defendants submitted that, necessary order may be passed in the matter.

3. Heard Adv.Shri.Patil for the plaintiff and Adv.Shri.Kamble for the defendants. Plaint para No.4 shows that, the plaintiff has specifically pleaded about the will deed dated 07/08/2018 executed by Nagnath Tukaram Bilapatte. By virtue of that will deed, the plaintiff has claimed her share in the compensation amount. The plaintiff has filed the certified copy of the will deed below Exh.4/2. It is registered will deed and it's certified copy is on record.

4. As per Section 66 of the Indian Evidence Act, 1872, the plaintiff has given a notice by way of an application Exh.65 and had called for the document from the custody of the defendants.

The defendant has not produced the will deed till today. There is no other option left before the plaintiff to prove his case except than by relying upon the certified copy of the will. Section 65 of the Indian Evidence Act being an exception to lead the evidence on original document, the application can be allowed to grant to the plaintiff to lead the evidence on the disputed document which is a certified copy of the will. Hence, the order -

ORDER

1. The application is allowed.
2. The plaintiff to lead evidence on the will filed below Exh.4/2 with a mandate that both the attesting witnesses of the will be produced at one and the same time for their examination.

Sd/-

(S.N.Sarde)

Civil Judge Sr.Div.,Ahmedpur.

Date:05/07/2024.