

MHST200000372020



R.D. No.06/2023

(old No.154/1978)

Dnyaneshwar (through LR's) vs. Nagu(through LR's).

ORDER BELOW EXH.639

Judgment Debtor (JD) No.3A2 namely Shri.Sanjiv Narahari Gite moved an application under Section 47 of the Code of Civil Procedure (in short CPC). DH has filed Say below same exhibit.

02. Heard Mr.N.M.Wadikar, the learned advocate for JD No.3A2. Heard Mr.A.V.Salunkhe, the learned advocate for Decree Holder (in short DH).

03. Perused the Application and Say. I have gone through the Application dated 19/11/2002 (Exh.110). I have also gone through the Vakalatnama dated 06/11/2000 (Exh.72), evidence of the witnesses on behalf of DH and JD (Exh.Nos.129, 155, 184, 210, 269, 278). I have also gone through the Final Decree (Exh.343).

04. Learned advocate for JD No.3A2 has vehemently argued that, certain rights accrued to him subsequent to decree. According to him, the Will dated 04/08/1999 is disputed. The alleged Will is surrounded by suspicious circumstances. There are some other crucial issues required to be decided. Hence, prayed for determining the questions as per section 47 of CPC.

05. Learned advocate for DH has argued that, all questions were determined by recording evidence. Final Decree is already on record. After determination of all questions, the Objectors went on raising objections and those were also decided. Hence, prayed for rejecting the Application.

06. It reveals from the Vakalatnama dated 06/11/2000 (Exh.72) that JD No.3A2 appeared in the matter through his learned advocate Shri.R.M. Sabnis. JD No.3A2 moved an Application dated 19/11/2002 (Exh.110) challenging the correctness of the Will. He also reported that, he has filed RCS No.101/2002 before Civil Judge Jr.Dn. Wai. It appears that, the said Application vide Exh.110 stood with the finding that as RCS No.101/2002 had been dismissed in default, the Application (Exh.110) become ineffective.

07. It is extremely important to take note that, in view of the challenge to the Will, the Executing Court directed the parties to adduce evidence. In support of Will, DH Shri.Laxman Shankar Gite (now deceased) adduced evidence on affidavit and has also examined the supporting witnesses (Exh..129, 155, 184). Mr.R.M.Sabnis, the learned advocate for JD No.3A2 had extensively cross examined two witnesses. However, the learned advocate failed to cross examine the third witness (Exh.184). 'No Cross' order came to be passed on 08/11/2008. It is thereafter, JD No.2A-1 namely Dilip Anant Gite chosen to adduce evidence and examined his witnesses (Exh.210, 269, 278). Learned advocate for DH had cross examined these witnesses. This JD No.3A2 neither cross examined witness nor adduce his evidence on affidavit.

08. Perusal of the aforementioned recording of evidence shows that, primarily two questions were raised. The first one is regarding challenging the correctness of Will dated 04/08/1999 and the capacity to execute the Will. The evidence as to mental capacity of one of the DH namely Dnyaneshwar Gite (now deceased) was also the subject matter. The Executing Court was pleased to hear both the parties and finally determined the questions so raised by Order dated 24/08/2018 resulting into passing of Final Decree (Exh.343) by Order dated 02/04/2019 vide Exh.01.

09. Considering the aforementioned status of the case, it appears that, JD No.3A2 who had already approached the Court and already raised the questions, stood decided in 2018 itself. In spite of having knowledge, JD No.3A2 has intentionally moved this Application on the same ground as taken earlier. This conduct shows that JD No.3A2 made an attempt to prolong the matter.

10. At the cost of repetition, it is necessary here to mention that the said Darkhast arise out of Judgment and Preliminary Decree dated 08/04/1930 passed in RCS No.1077/1928. The present darkhast initially filed and registered on 20/11/1978. It has been transferred to the newly established Court (CJSD Wai) in 2023. It is due to the conduct of Objectors regarding the tactics to delay the matter, already costs has been imposed upon them.

11. Here, for the delay so caused and for concealment of fact on the part of JD No.3A2 who has already raised the objection and has also availed the opportunity; cost is required to be imposed upon him.

But, considering the aspect that Darkhast is about partition decree and this JD No.3A2 is also the beneficiary; he is also entitled to the relief alongwith DH. Thus, considering the nature of the litigation, age of the parties and the status of the case, leniency is shown. Hence, this order :

ORDER

Application (Exh.639) is rejected.

Place : Wai
Date : 05.04.2025

(Priti D. Taru)
Civil Judge Senior Division, Wai
Dist. Satara.

CERTIFICATE

I am affirm that the contents of this [P.D.F.](#), file Order are same, word to word, as per the original order.

Name of the Stenographer	:-	G.M.Kulkarni (Steno Grade-II)
Court	:-	Civil Judge Senior Division, Wai. Dist. Satara.
Date	:-	05.04.2025
Order signed by the presiding officer on	:-	05.04.2025
Judgment/order uploaded on	:-	05.04.2025