

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 482 OF 2024

Chhangomal Mangaldas Verhani
Since Deceased Through Legal Heirs .. Petitioners

Versus

Bhagchand Mangaldas Verhani
Since Deceased Through Legal Heirs and Ors. .. Respondents

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• Mr. Virendra Pethe, Advocate for Petitioners.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 15, 2024.

P.C.:

- 1.** Heard Mr. Pethe, learned Advocate for Petitioners who are Plaintiffs before the Trial Court in Regular Civil Suit No.486 of 2001.
- 2.** Facts in the present Suit proceedings are some what convoluted.
- 3.** Briefly stated, the Suit has been filed by the Plaintiffs' predecessor-in-title one Shri. Chhangomal Mangaldas Verhani seeking partition and entitlement to 50% share in the suit property belonging to his father Mangaldas Verhani.
- 4.** Apart from the original Plaintiff, the only other legal heir according to the original Plaintiff, who would be entitled to the balance 50% share of the property would be Bhagchand Mangaldas

Verhani, younger brother of the original Plaintiff. Today, original Petitioner and the original Defendant No.1 are no more and they are represented by their legal heirs.

5. Incidentally when the Suit was filed, Defendant No.2 – Shri. Pradeep Bhagchand Verhani, son and Defendant No.3 – Smt. Jaishri Pradeep Verhani, daughter in law of original Defendant No.1 were also impleaded as Defendants. They were impleaded because it was claimed by these Defendants that at that time Mangaldas Verhani expired leaving behind a Will and under the said Will his entire property was bequeathed to the original Defendant Nos.2 and 3 only i.e. son and daughter in law of original Defendant No.1. It is seen that Mangaldas Verhani expired in 1991. The Suit is filed in the year 2001.

6. When a question is posed to Mr. Pethe with respect to the probate of the Will, Mr. Pethe would submit that the alleged copy of the Will has till date never been placed before the Court nor brought before the Court.

7. However Mr. Pethe would submit that after the entire evidence and witness action of the Defendants was over, Defendant No.2 has now filed Application for filing additional evidence on his behalf on 16.03.2023. By this additional Affidavit, Defendant No.2 desired and sought to bring on record the original copy of the alleged Will dated 31.08.1988 and to lead evidence with effect thereto.

8. Mr. Pethe has drawn my attention to paragraph No.6 of the Application wherein it is stated that Defendant No.2 was a layman and his previous Advocate who is now no more had not advised him for filing the original copy of the registered Will in the suit proceedings. Hence he had not filed the will earlier.

9. *Prima facie*, I find that the reason given by Defendant No.2 is untenable on the face of record. Plaintiffs i.e. Petitioners before me have contested the Application.

10. The learned Trial Court however passed order dated 23.08.2023 allowing the Defendant No.2 to proceed with bringing the additional document on record i.e. the Will of the deceased Mangaldas Verhani and lead evidence thereon. It also directed the Plaintiff to cross-examine the Defendant No.2 on these additional document i.e. Will.

11. In view of the aforementioned facts, I find that the first and foremost question that ought to have been asked to the Defendant No.2 by the learned Trial Court was to place on record copy of the probate of the alleged Will of the deceased Mangaldas Verhani, the father of the original Plaintiff and original Defendant No.1. I find that this question has not been asked at all nor discussed in the entire order which is impugned before me.

12. Procedure for proving a Will by leading evidence is unheard of and would not determine the rights of the parties to the estate of the deceased Mangaldas Verhani. Further such Application is made belatedly after entire evidence is complete. Allowing such an Application virtually changes the entire cause of action.

13. In view of the above, an arguable case has been made out by Mr. Pethe for stay of the impugned order dated 23.08.2023. The order dated 23.08.2023 is therefore expressly stayed.

14. Hence, issue notice to the Respondents. Humdast permitted.

15. In addition to Court notice, Petitioners are directed to serve copy of the Petition and this order on the Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate Affidavit of service with tangible proof thereof on or before the next date.

16. Respondents are directed to file their Affidavit-in-Reply to the Writ Petition and answer the questions posed by this Court in the aforementioned order and file their Reply within a period of two weeks from today.

17. Rejoinder, if any, to be filed within one week thereafter.

18. Stand over to **05th February, 2024.**

[MILIND N. JADHAV, J.]