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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2013 OF 2015

Rajubai Somnath Shinde ... Petitioner

Vs.

Maruti Vittoba Shinde
(since deceased)

1. Sadashiv Maruti Shinde and others ... Respondents

Mr.Milind R.Deshpande, Advocate for the Petitioner.

None for the Respondents.

CORAM : R.G.KETKAR, J.

DATE : 16th NOVEMBER, 2015

P.C. :

. Heard Mr.Milind R.Deshpande, learned Counsel for the petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, original plaintiff has challenged the judgment and order dated 20/12/2014 passed by the learned Joint Civil Judge, Senior Division, Barshi below Exhibit 108 in Regular Civil Suit No. 499 of 2012 (Old Regular Civil Suit No. 312 of 2009). By that order, the learned trial Judge allowed the application made by the defendants seeking permission to lead secondary evidence in respect of medical certificate attached to Will -Exhibit 100.

3. The defendants filed application for producing secondary evidence in respect of medical certificate as defendant No.1-Maruti Vithoba Shinde had executed Will at Exhibit 100 in

which he had attached photocopy of medical certificate issued by one Dr.Andhare. The defendants who are beneficiaries of that Will came with the case that the original medical certificate is lost and therefore, they are unable to produce the same in the Court and prove its contents from Dr.Andhare.

4. In support of this Petition, Mr.Deshpande strenuously contended that if the defendants have produced original Will at Exhibit 100, they ought to have produced original medical certificate along with the Will. It is not possible to accept this submission as in paragraphs 2 and 5 of the order, the learned trial Judge has recorded a finding that defendant No.1 - Maruti Vithoba Shinde had executed Will at Exhibit 100 in which he had attached photocopy of medical certificate issued by Dr.Andhare. For the reasons stated in paragraph 5 of the order, the learned trial Judge held that the situation is clearly covered by Section 65(c) of the Indian Evidence Act, 1872. In view thereof, I do not find that the learned trial Judge has committed any error. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner – original plaintiff, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C. Order accordingly.

(R.G.KETKAR, J.)