

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3078 OF 2016

Rangnath Shamrao Yewale
Age: 65 years, Occu.: Agri.,
R/o Takli Ambad, Tq. Paithan,
Dist. Aurangabad.

..PETITIONER

VERSUS

1. Rohidas Laxman Narke
Age: 70 years, Occu.: Agri.,
R/o Takli Ambad, Tq. Paithan,
Dist. Aurangabad.

2. State of Maharashtra
Through District Collector, Aurangabad.

..RESPONDENTS

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Mr. R.O. Awasarmol, Advocate for petitioner.
Mr. N.T. Tribhuwan, Advocate for Respondent No.1.
Mr. S.K. Tambe, A.G.P. for Respondent No.2.

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**CORAM : T.V. NALAWADE, J.
DATED : 23rd SEPTEMBER, 2016**

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard both sides by consent for final disposal.

2. The petition is filed to challenge the orders made in M.A.R.J.I. Nos. 899 of 2011 and 139 of 2012 which are pending in the Court of Joint Civil Judge, Senior Division, Aurangabad. M.A.R.J.I. No. 899 of 2011 is filed by

the present respondent for probate on the basis of will dated 14th July, 2010. M.A.R.J.I. No. 139 of 2012 is filed by the present petitioner for probate on the basis of will dated 05th September, 2008. By filing pursis of Exhibit 20, both the sides had submitted that the evidence can be recorded in one matter i.e. M.A.R.J.I. 899 of 2011 and the same evidence can be used in both the matters. In this way apparently the two matters were clubbed as they were involving wills of the same person.

3. It appears that the evidence on affidavit was filed at Exhibit 46 in M.A.R.J.I. No. 899 of 2011 by present petitioner. As the petitioner did not turn up for subjecting himself for cross examination, order was made to show that the evidence was forfeited and his evidence was closed. After that first application was moved in M.A.R.J.I. No. 899 of 2011 for giving permission to lead evidence by the present petitioner. The first application came to be rejected on 01st March, 2016. Then the petitioner filed another application in M.A.R.J.I. No. 139 of 2012 but this application came to be rejected on 08th March, 2016. Thus, the orders dated 01st March, 2016 and 08th March, 2016 are under challenge.

4. In view of the aforesaid circumstances and considering the possibility that there was some misconception in the mind of learned Counsel appointed by the present petitioner, this Court holds that opportunity needs

to be given to the present petitioner to take decision after the context. The matters are kept pending for more than four years due to aforesaid circumstances and some directions can be given to see that the matters are expeditiously disposed of. Learned Counsel for present respondent submits that some costs needs to be imposed on the petitioner.

5. In view of these circumstances, this Court holds that the petitioner can be directed to pay costs of Rs.5,000/- (Rupees Five Thousands Only) to the respondent and that is to be deposited in the Trial Court within one month from today. Petition is disposed of in terms of following order:

Writ petition is allowed. The order made by the lower Court is hereby set aside. The prayer made in proceeding for setting aside the order of forfeiture of evidence and for permission to lead the evidence are allowed. If the amount is deposited within one month from today, the Court below is expected to allow the applicant to lead the evidence and if something new is brought on record, the other side will also have opportunity to lead the evidence. Evidence is to be given only in M.A.R.J.I. No. 899 of 2011 which will be used in both the matters and both the matters will be decided by a common judgment. Rule is made absolute in the aforesaid terms.

(T.V. NALAWADE, J.)

SSD