

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

WRIT PETITION NO. 8756 OF 2015

Sudhir Prakash Patil
Through G.P.A.
Prakash Ramrao Patil

..PETITIONER

VERSUS

Madhukar Raghunath Wani and Others

..RESPONDENTS

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Mr. V.B. Patil, Advocate for petitioner.
Mr. V.P. Latange, Advocate for Respondent Nos. 1, 2 and 4.

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**CORAM : T.V. NALAWADE, J.
DATED : 14th DECEMBER, 2016**

ORDER :

1. The petition is filed to challenge the order made on Exhibit 131 filed in Regular Civil Suit No. 119 of 2004 which is pending in the Court of Civil Judge, Junior Division, Raver. The suit is filed by present petitioner for relief of declaration and possession on the basis of will allegedly executed by Shivaji. Both sides are heard.

2. It appears that present petitioner / plaintiff is cousin of Shivaji. The respondents / defendants are also close relatives of Shivaji and Madhukar is the uncle of Shivaji. By filing written statement, they have

taken defence that will is forged and alternate defence is taken that by using undue influence signature of Shivaji was obtained. Submissions made show that execution of will is proved. The matter is kept for arguments.

3. The aforesaid application was filed by present respondents / defendants for giving them permission to produce some documents like two registered sale deeds executed by Shivaji in the year 1989 in favour of Madhukar as defendant wants to prove that the signatures appearing on the sale deeds which were registered do not tally with the signature appearing on the will shown to be executed in the year 1983. After hearing both the sides, the Trial Court has held that for proper adjudication of the matter, opportunity needs to be given to the defendants to prove this defence. The defendants have given reason for not producing the record in the past that the original sale deeds were not traceable and recently they were traced by them.

4. Learned Counsel for petitioner submitted that it is nothing but delaying tactics. He placed reliance on observations made by this Court in the case reported as **2015(4) All M.R. 231 (Dileep Nevatia Vs. State Bank of India)**. In that case, the Court found that evidence which was

sought to be adduced would not have advanced plaintiffs case. Such observation is not possible in the present case in view of specific defence taken by the defendants.

5. Considering the relationship between the parties and the fact that in the past sale deeds were also executed in favour of Madhukar by Shivaji, opportunity needs to be given to the defendants to bring their evidence of forgery on record. For proper adjudication of the matter, production needs to be allowed. This Court sees no reason to interfere in the order made by the Trial Court. Petition stands dismissed.

(T.V. NALAWADE, J.)

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