

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1065 OF 2016

SHRIKANT SHAMBHU VOLVOIKAR., ... Petitioner
Versus
NARENDRA PANDU CHATIM AND 2 ORS., ... Respondents

Mr. R. G. Ramani and Mr. Myron D' Souza, Advocates for the
Petitioner.

Coram:- F. M. REIS, J.

Date:- 21st November, 2016

ORAL ORDER

Heard Mr. R. G. Ramani, learned Counsel appearing for the
Petitioner.

2. The Petitioner takes exception to Order passed by the learned
Trial Judge dated 10.02.2016 which came to be confirmed by the
Lower Appellate Court by the impugned Judgment dated 12.09.2016
whereby a document purported to be a Testament/Gift which was
marked 'Y' for identification was taken on record and marked as an
exhibit.

3. Shri R. G. Ramani, learned Counsel appearing for the Petitioner,
has pointed out that the purported document is non-existent as,
according to him, the document is fabricated and there is enough
material relied upon by the Petitioner to suggest that the document

has been manufactured by the Respondents and that the document, in any event, is not in accordance with law. Learned Counsel has thereafter taken me through an Order passed by the learned Judge whilst marking the document 'Y' for identification wherein it was clearly noted that the burden was on the Respondents to establish the authenticity of such document. Learned Counsel further pointed out that the learned Judge in the impugned Order dated 10.02.2016, has reviewed its earlier Order and directed the document to be exhibited. It is further submitted that the document is not the original document and the learned Judge was not justified to pass the impugned Order. Learned Counsel further submits that even the Appellate Court whilst dismissing the Appeal From Order filed by the Petitioner has erroneously proceeded to hold that the learned Judge was justified to pass the impugned Order.

4. I have considered the submissions of the learned Counsel and I have also gone through the records. It need not be overemphasised that merely exhibiting the document would not by itself establish the authenticity or the proof of the contents of such document. The learned Judge in para 8 of the impugned Order dated 10.02.2016, has clearly noted that the burden of proof to establish the authenticity of the document would be on the Respondents. In such circumstances, taking note of the defence taken by the Petitioner in his additional written statement in connection with the subject document and the observations of the learned Judge in the impugned Order, I find that

there is no failure of justice to the Petitioner in case the impugned Order is allowed to stay.

5. In such circumstances, the question of any interference at this stage in the proceedings under Article 227 of the Constitution of India, would not at all be justified. But, however, the Petitioner, if so advised, is at liberty to challenge the impugned Order in case any adverse Judgment is passed against the Petitioner at the time of the final decision of the suit on merits.

6. Reserving the said liberty, Petition stands rejected.

F. M. REIS, J.

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