

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

WRIT PETITION NO. 11459 OF 2018

**GOPINATH SADASHIV SHRESHTHA
VERSUS
RAJENDRA SAADASHIV SHRESHTHA**

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Advocate for the Petitioner : Shri D. K. Dagadkhair
Advocate for the Respondent : Shri D. A. Mane h/f.
Shri D. M. Pingle

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 16th OCTOBER, 2018.

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PER COURT :

1. The petitioner is aggrieved by the order dated 04/09/2018 passed by the Trial Court, by which, his application Exhibit 108, filed for referring the will deed to a hand writing expert, has been rejected in MARJI No. 77/2016.

2. I have considered the strenuous submissions of the learned Advocate for the petitioner and have gone through the petition paper book with his assistance.

3. I find that the petitioner had earlier moved an application Exhibit 61 praying that the signature on documents

at Exhibit Nos. 48, 49 and 52 be compared with the signature of the disputed will. It was contended that the signature on the will is not of the executor Sadashivrao Shreshtha. That application was on 06/02/2018. Exhibit 108 was then filed on 03/08/2018 seeking an order to refer the will to the hand writing expert. The Trial Court has considered that the said application has been filed even after the final submissions of the respondent have concluded. It is further recorded that the scope of enquiry in the said proceeding was limited, the testamentary Court is only required to consider as to whether the will is duly executed. Summary procedure is to be followed. It is in these circumstances that the Trial Court has rejected Exhibit 108.

4. I find that the petitioner could have made such a request when the proceedings were lodged in 2016. The documents which are sought to be relied upon for comparing the signatures are certified copies and are not originals. The respondent has already concluded final arguments in the matter.

5. As such, I do not find that the impugned order could be branded as being perverse or erroneous. This petition, being devoid of merit is, therefore, dismissed.

6. In the event, the petitioner suffers an adverse order in the pending proceedings, he would be at liberty to raise a comprehensive challenge on all counts and all contentions of the parties are, therefore, kept open.

(RAVINDRA V. GHUGE, J.)

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