

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
***CIVIL APPELLATE JURISDICTION***  
**WRIT PETITION NO. 2411 OF 2018**

**Sadanand @ Sadashiv Vyankatrao Dubal** ..... **Petitioner**

**VERSUS**

**Shidojirao Hanmantrao Dubal & Ors.** ..... **Respondents**

Mr.Vaibhav R.Gaikwad for the Petitioner.

Mr.Girish R.Agrawal for the Respondent nos.1 to 3.

**CORAM : R.D. DHANUKA, J.**

**DATE : 8<sup>th</sup> OCTOBER, 2018**

**P.C.**

By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 28<sup>th</sup> November, 2017 passed by the learned trial judge rejecting the application (Ex.40) filed by the petitioner seeking permission to lead secondary evidence of the alleged Will.

2. Mr.Gaikwad, learned counsel appearing for the petitioner invited my attention to the order dated 13<sup>th</sup> November,2017 passed by learned trial judge below Ex.39 rejecting the application for permission to lead secondary evidence in respect of the proof of the Will on the ground that the said application was premature and thus the issuance of witness summons also was premature. The petitioner thereafter filed a fresh application (Ex.40) which also came to be rejected by the learned trial judge on the ground that the application was not supported by the affidavit and it was not clear from the application made by the plaintiff

whether the Will deed was lost or not traceable and/or efforts made by the plaintiff to trace the said Will.

3. Learned counsel appearing for the petitioner submits that the certified copy of the Will is already produced on record which is disputed by Mr.Agrawal, learned counsel for the original defendant.

4. According to the petitioner he has already laid foundation for leading secondary evidence. The learned trial judge however has held that the said application is vague and without particulars.

5. In the interest of justice, the petitioner is permitted to lead evidence and to lay foundation as to why the petitioner requires to lead secondary evidence insofar as the Will in question is concerned.

6. If the petitioner is able to satisfy the conditions setout under section 65 of the Indian Evidence Act, the learned trial judge may consider the application of the petitioner to lead secondary evidence at that stage.

7. The impugned order passed by the learned trial judge is substituted by this order.

8. Writ petition is disposed of in the aforesaid terms. There shall be no order as to costs.

**[R.D. DHANUKA, J.]**