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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6133 OF 2018

Prabhakar Murlidhar Jagtap .. Petitioner
Versus
Rajubai Gangadhar Jagtap & Ors. ..
Respondents

Mr. Amey Deshpande i/b. J.D.Khairnar for petitioner
Mr. Girish R. Agrawal for respondent No.1.

CORAM : MRS. MRIDULA BHATKAR, J.

DATE : 19th July 2018.

P.C.

1] This petition is directed against the order dated 12th March 2018 passed by the Joint Civil Judge, Senior Division, Malegaon, whereby the application below Exh.70 filed in Civil Misc.Application No.55 of 2014 was allowed.

2] The petitioner had filed probate petition of the will dated 24th November 1995 of his distant uncle Gangadhar Jagtap. The will was probated. In the said proceedings, the widow of said deceased Gangadhar was respondent. She challenged that order before the lower appellate court by way of an appeal which was

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dismissed. Thereafter, the widow filed proceedings i.e. Enquiry Application No.55 of 2014 under section 263 of the Indian Succession Act for revocation or annulment of the said probate.

3] In the course of enquiry, the widow of Gangadhar who is respondent in this petition, moved an application that the signature of deceased Gangadhar on the will be sent for opinion of handwriting expert. The said application was contested by the present petitioner. However, the Court allowed the said application. Hence, this petition.

4] Learned Counsel Mr. Deshpande while assailing the impugned order has submitted that the will is already probated. The appeal filed by the respondent is also dismissed. Now the issue of genuineness of the will is no more before the court. He has further submitted that for the purpose of opinion of hand writing expert it is necessary to send the specimen hand writing/ signature of the person whose handwriting is questioned. In the present case, the signatory of the will is dead. His specimen signatures cannot be obtained. Therefore, entire exercise will be futile. The order passed by the learned Judge of allowing the said application

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is illegal and be set aside. Learned Counsel also relied upon the reasonings on Issue Nos. 1, 2 and recorded by the Civil Judge in his judgement dated 30th September 2005 in Civil Misc. Application No.23 of 2003. He submitted that the trial court has discussed as to how the will was executed by Mr. Jagtap.

5] The learned Counsel for the respondent – widow while opposing this petition has pointed out that the natural signatures of Gangadhar Jagtap are available. The respondent – original applicant relied upon the bank document bearing signature of Gangaddhar so also the signature of Gangadhar on one notice issued by Talathi.

6] The learned Counsel has thus supported the order passed by the learned Judge.

7] Considered the submissions and relevant paragraphs of the judgement of the Civil Judge, Senior Division, Malegaon so also the impugned order passed by the trial court.

8] There is no discussion in the original judgement about

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the forgery or the genuineness of the signature of the deceased while discussing the Issue Nos. 1, 2 and 4. Specimen signatures of deceased Gangadhar now cannot be obtained as he is no more. However, his natural signatures are available and thus the natural signatures and the disputed signature on the will can be sent to handwriting expert for his opinion. The trial court in para 5 of the order has taken into account this factual aspect and thus based on whatever documents available has ordered to send the same to the handwriting expert for his opinion. It is to be noted that the opinion of the hand writing expert is not based on perfect science.

9] However, at this stage, no illegality is found in the order passed by the learned Civil Judge. Hence, the petition is dismissed.

Yogeshwar
Bhalchandra
Gokhale

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(MRS.MRIDULA BHATKAR, J.)