

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (ST.) NO.25063 OF 2018

Govinda Laxman Dhumse
since deceased through legal heirs and Ors. .. Petitioners

V/s.

The State of Maharashtra and Ors. .. Respondents

Mr.R.N.Gite for the petitioners

Mr.C.D.Mali, A.G.P. for the respondent nos.1 to 5

CORAM: K.K. TATED, J.

DATED : NOVEMBER 26, 2018

P.C. :

1 Heard.

2 By this petition under Article 227 of the Constitution of India, the Petitioners challenge the order dated 11.6.2018 passed by Joint Civil Judge, Senior Division, Nashik below Exhibit-276 A in Special Civil Suit No. 395 of 2008 permitting defendant no.9 to take appropriate steps for placing on record photo copy of the Will dated 09.08.1992.

3 It is the case of the petitioner that Respondent original defendant no.9 filed Application below Exhibit-276-A in Special Civil Suit No. 395 of 2008 on 11.6.2018 directing plaintiff to place

on record copy of will dated 09.08.1992 of Govind Laxman Dhumse which was registered with the Sub-Registrar bearing no.3-18/1992.

4 The learned counsel for the Petitioner submits that the court below failed to consider the fact that neither Respondent original defendant no.9 filed any Application under Order XII Rule 8 of the Code of Civil Procedure, 1908 ie. Notice to produce the document nor any Application under Section 65 and 66 of the Indian Evidence Act, 1872 for permitting him to lead secondary evidence. He submits that the Trial Court dismissed defendant no.9's Application below Exhibit 276-A, permitting Respondent to take appropriate steps for placing on record certified copy of Will dated 09.08.1992. Hence, said order is required to be set aside.

5 On the other hand, the learned counsel for the Respondent nos.1 to 5 submits that present Writ Petition itself is misconceived. He submits that Trial Court has rejected their Application below Exhibit 276-A and observed that the defendant can place certified copy of Will dated 9.8.1992, by following due process of law. Therefore, there is no question of entertaining the present Writ Petition.

6 I have heard both the sides at length.

7 Bare reading of the order dated 11.6.2018 shows that Trial Court rejected defendant no.9's Application below Exhibit 276-A

and observed that the defendant can place on record certified copy of will dated 9.8.1992, by following due process of law. Therefore, there is no question of entertaining the present Writ Petition.

8 Hence, Writ Petition stands rejected.

9 No order as to costs.

(K.K. TATED, J.)