

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

WRIT PETITION NO.5038 OF 2018

Dattatray Narayan Jadhav ... Petitioner
Vs.
Avinash Shivaji Jadhav ... Respondent

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Mrs. Vaishali Jagdale for the Petitioner.
Mr. M. N. Dhamal for the respondent.

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CORAM : M. S. KARNIK, J.

DATE : 27th SEPTEMBER, 2019.

P. C.:

1. Heard learned counsel for the petitioner.
2. The petitioner by this petition is aggrieved by the order passed by the Appellate Court rejecting the application Exhibit 48 filed by the petitioner to exhibit certified copy of the death certificate of Maruti Raghu Jadhav produced in Trial Court and included in 'D' File. It is the case of the petitioner that death certificate is of the plaintiff and defendants common ancestor Maruti Raghu Jadhav. The Appellate Court was of the view that ordinarily the extracts of birth death register being public documents are admissible in evidence being not disputed. As the defendants disputed the contents of the death certificate the same

were required to be proved by the petitioner. As there was no material on record as to the person on whose information or knowledge such entries were recorded, the authenticity of the entries become disputed. The Appellate Court therefore was of the opinion that as the source of disputed entries are not proved, the Trial Court had rightly refused to accept the said document but merely allowed its production. As the petitioner did not show the steps taken by the appellant to prove the authenticity of the entries of the relied document, the Appellate Court was of the opinion that the petitioner-appellant has not made out his case seeking exhibiting of the documents.

3. It is now the case of the petitioner that based on the death extract which is at page 115 of the paper book the petitioner-appellant will be in a position to show the authenticity of the documents. However these materials were not before the Appellate Court when the impugned order dated 26.9.2017 was passed.

4. In these circumstances, I am not inclined to interfere with the order passed by the Appellate Court.

5. However, if an appropriate application is made by the petitioner relying upon the death extract which is at page 115 of the paper book or any other material in support of the petitioner's case, such application may be considered by the Appellate Court on its own merits and in accordance with law without being influenced by any observations made in the impugned order.

6. Needless to mention that I do not see any error in view taken by the Appellate Court while rejecting the application below Exhibit 48.

7. Subject to above, the petition is dismissed.

(M. S. KARNIK, J.)