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support of the statement recorded under Section 161 of the Cr.P.C. for an offence registered against the Petitioner-Defendant in relation to the alleged Will in question and Application-Exhibit-606 for production of documents, came to be moved. All these three Applications are allowed by the impugned order. As such, this Petition.

2] The submissions are, since the suit is initiated by the Respondents-Plaintiffs, the onus to prove that the alleged Will is invalid and null and void is on the Respondents-Plaintiffs. According to the learned Counsel for the Petitioner, since copy of the Will was not produced, the Defendant, so as to properly establish his case, has produced the same during his cross-examination. It is submitted that production of such document ought not to have been considered as a basis for granting applications for issuing witness summons. According to him, the aforesaid order goes contrary to the provisions of Order XVIII Rule 17, as the same cannot be invoked by a party to fill-up lacunae. The learned Counsel for the Petitioner has drawn support from the Judgment of the Apex court in the matter of *Vadiraj Naggappa Vernekar (Dead) Through LRs vs Sharadchandra Prabhakar*

*Gogate*¹ (paras 25 and 26) so also on the judgment in the matter of *K.K. Velusamy vs. N. Palanisamy*² (paras 9 and 10).

3] While countering the aforesaid submissions, the learned Counsel for the Respondents-Plaintiffs would urge that the order impugned is passed by the Court below having regard to the fact that the original Will was produced by the Petitioner during his cross-examination. As is rightly pointed out by the learned Counsel for the Petitioner that the onus is on the Respondents-Plaintiffs to prove that the Will is invalid and null and void, the Respondents-Plaintiffs are required to move the applications for issuance of witness summons. According to the learned Counsel for Respondents-Plaintiffs, application for inspection/production of documents under Order XI though was moved and resisted by the Petitioner, the Court below has failed to pass an order on the said Application-Exhibit-196 and that being so, the order impugned is just and proper. Similar arguments are adopted while questioning validity of the order passed below Exhibits-606, 607 and 608.

1 (2009) 4 SCC 410

2 (2011) 11 SCC 275

4] Considered the rival submissions.

5] This Court is required to appreciate that, at the relevant time, i.e. in 2017 before recording of evidence in the suit began, Respondents-Plaintiffs moved an Application under Order XI Rules 14 and 15 i.e. Application-Exhibit-196. Parties are in agreement that the said application still remains pending and no orders thereon are passed.

6] It is for the first time, the Petitioner has produced original copy of the disputed Will during recording of his cross-examination, as could be confirmed from the extract of cross-examination produced on record i.e. on June 25, 2018. It is at this moment, aforesaid Applications being Applications at Exhibits-606 to 608 came to be moved.

7] As far as Application-Exhibits 606 to 608 are concerned, the said Applications are based on the fact that the Petitioner has produced original Will/document during his cross-examination and the Respondents-Plaintiffs intend to discharge their onus by adducing evidence that the said Will is invalid and null and void.

8] As such, in the aforesaid background, particularly when the original document Petitioner has failed to produce in response to the Application-Exhibit-196, Respondents-Plaintiffs were justified in moving the Applications for issuance of witness summons, so as to establish that the Will which does not contain signature/thumb impression of the deceased, is invalid and null and void.

9] Apart from above, the fact remains that perusal of Applications-Exhibits-606 to 608 in categorical terms speaks of the permission to adduce the evidence in the backdrop of the production of original Will, in favour of the Plaintiffs. Since production of the Will is formed to be the basis for moving the Applications for issuing witness summons, same prima facie appears to be justified. As far as prayer in Application-Exhibit-607 is concerned, same is for issuance of summons to the Investigating Officer, as the offence registered against the Petitioner has resulted in recording of statement under Section 161 of the Cr.P.C and the law permits such statement to be subjected to scrutiny of evidence during proceedings in the civil suit. Similar appears to be the case qua Applications-Exhibits- 606 and 608.

10] In the aforesaid background, having regard to the fact that evidence which the Respondents-Plaintiffs intend to produce on record in the backdrop of prayer clause (a) of the Plaint about declaring the Will in question as invalid and null and void, is based on original Will which is for the first time produced on record during the cross-examination of the Petitioner, the impugned order is very much justified and it is in consequence to the action of the Petitioner of production of the original document i.e. Will. This Court cannot be oblivious to the fact that cross-examination of the Petitioner has just commenced and the Petitioner will get every opportunity to cross-examine the witnesses of the Plaintiffs, so as to demolish the case as is sought to be put-forth by the Respondents-Plaintiffs. That being so, no interference is warranted in the impugned order. Petition as such fails and the same stands dismissed.

11] In view of dismissal of Petition, Civil Application taken out therein does not survive and the same also stands disposed of.

(NITIN W. SAMBRE, J.)