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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 13747 OF 2018**

Maulana Yasin Maner

.....Petitioner

V/s.

Abdul Yasin Maner and others

.....Respondents

Mr. Sushil A. Inamdar for the Petitioner

CORAM : NITIN W. SAMBRE, J.**DATE : OCTOBER 16, 2019.****P.C.**

Heard. R.C.S. No. 31 of 2012 is initiated by respondent for partition, declaration and compensation.

2 After evidence of plaintiff was over, petitioner-defendant no. 1 moved an application Exhibit 245 claiming that since defendant no. 2A has supported the claim of the plaintiff, he be directed to enter into the witness box before defendant no. 1 could produce his evidence.

3 Learned counsel so as to substantiate the said claim has invited attention of this Court to the written statement filed by original defendant no. 2 under the signature of defendant no. 2A being Power of Attorney holder and written statement filed after the death of defendant no. 2 in the capacity of legal representative of said defendant. Learned counsel would urge that about the alleged existence of the registered Will in favour of defendant no. 2A by defendant no. 2 was never disclosed by defendant no. 2 in the written statement whereas for the first time, defendant no. 2A in his written statement has come out with the alleged Will and has supported the case of the plaintiff. By inviting attention of this Court to the provisions of Order XVIII Rule 2 of the Code of Civil Procedure, 1908, the submissions are, defendant no. 2A should be directed to enter into the witness box before petitioner-defendant no. 1 could enter into witness box.

4 If the aforesaid contentions are appreciated in the backdrop of pleadings, prayer in the plaint and that of written statement filed by

defendant no. 2 & defendant no. 2A, it is noted that Will dated 13/03/2002 is a registered document to which challenge is raised by plaintiff in the Suit by amending the same. Defendant no. 2 appointed defendant no. 2A during his lifetime as his Attorney and submitted written statement which appears to have been countered by defendant no. 2A by separate written statement which was tendered after death of defendant no. 2.

5 Though the learned counsel for the petitioner is right in inviting attention of this Court to para 1A of the written statement tendered by defendant no. 2A to some extent admitting the claim of the plaintiff, however, this Court is also required to appreciate that defendant no. 2 at no point of time supported the case of the plaintiff.

6 In the aforesaid view, even if presuming that defendant no. 2A to some extent has supported the claim of the plaintiff, it is always open for the petitioner to extract contradictions while recording evidence of defendant no. 2A *qua* written statement filed by

defendant no. 2. The aforesaid contradictions can be extracted having regard to the fact that it is defendant no. 2A who has signed the written statement filed by defendant no. 2 in the capacity of Power of Attorney.

7 In the aforesaid background, the claim of the petitioner of issuance of directions to the defendant no. 2A to adduce his evidence prior to evidence of petitioner-defendant no. 1 is not warranted or justified.

8 In the aforesaid background, in my opinion, no interference is called for in the order impugned. Petition fails, stands dismissed.

[NITIN W. SAMBRE, J.]