



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1399 OF 2019

Shri N.K. Ramdas S/o V. Natesan .Vs. Shri N. Kailasan S/o V. Natesan and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.V. Bhutada, Advocate for the petitioner.

Shri N.H. Shams, Advocate for the respondent No.1.

Shri A.M. Kukday, Advocate for the respondent No.2.

CORAM : ANIL S. KILOR, J.

DATED : 22/08/2023

1. Heard.

2. The plaintiff and defendant No.2 who are the real brothers, both are admitting the fact that the Will was executed by their father and accordingly, a pursis at Exh.50 was filed before the trial Court to exhibit the document i.e. the Will at Article 'A' and marked it as Exhibit.

3. Despite the fact that, nobody is disputing the Will and its contents the learned trial Court vide impugned order dated 17.09.2018 has observed that the independent proof is required as per Section 63 of the Indian Succession Act, 1985 and Section 68 of the Indian Evidence Act, 1872 to prove the Will even if the defendant No.2 has given admission.

4. In the circumstances, once the document has been admitted by both the parties and there is no dispute about the existence and contents of the same refusal to exhibit the said document by the trial Court is illegal. Accordingly, I pass the following order:

- i) The writ petition is **allowed**.
- ii) The order dated 17.09.2018 passed below Exh.1 and 50, is hereby quashed and set aside.
- iii) The learned trial Court is directed to exhibit the document namely Will at Article 'A'.

Writ Petition is **disposed of** accordingly. No order as to costs.

JUDGE