

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1637 OF 2012

Mohanrao s/o Eknath Kamble,
Age: 54 years, Occ: Service & Agri.,
R/o. Gawali Nagar, Nanded Road,
Latur, District Latur.

...Petitioner

versus

1. Shankarrao s/o Bhimrao Bhonde,
Age: 51 years, Occ: Service,
R/o. Gawali Nagar, Nanded Road,
Latur, Tq. & Dist. Latur.

2. Ashok s/o Bhimrao Bhonde,
Age: 47 years, Occ: Service,
R/o. Manthale Nagar, Latur,
Tq. & Dist. Latur.

3. Smt. Sarika w/o Shrimant Kamble,
Age: 33 years, Occ: Household,
R/o. Gawali Nagar, Near Bharat
Housing Society, Latur,
Tq. & Dist. Latur.

...Respondents

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Mr. P.R. Katneshwarkar, Advocate for petitioner.

Mr. S.B. Ghute, Advocate for respondent Nos. 1 & 2.

Mr. D.J. Patil, Advocate h/f Mr. N.B. Suryawanshi, Advocate
for respondent No.3.

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CORAM : N.W. SAMBRE, J.

DATE : 15TH APRIL, 2015

ORAL ORDER :

The petitioner-plaintiff has questioned the legality of the
order dated 04/11/2011 passed by learned Civil Judge, Junior

Division, Latur in Regular Civil Suit No. 650 of 2007 rejecting the request of the petitioner for permission to lead secondary evidence. As such, present petition.

2. Mr. Katneshwarkar, learned Counsel for the petitioner has invited my attention to the pleadings in the plaint in support of the document, which is sought to be proved, by way of secondary evidence. He would urge that the suit for specific performance initiated by the petitioner-plaintiff is based on oral agreement and specific pleading was raised that the receipt executed by the defendant for an amount of Rs.25,000/- on 27/03/1996 was produced at the time of filing of the suit. According to him, since sufficient foundation was already laid in the suit, permission ought to have been granted. He would further urge that the prayer for amendment by the petitioner-plaintiff in the matter of placing on record photo copy of the agreement of sale, which was discovered in later point of time will have hardly any impact on the right of other side, as according to him, based on the earlier foundation, he has every right to lead secondary evidence in support of the said receipt.

3. Learned trial Court, while rejecting the application, has recorded that the application for amendment of the plaint i.e. Exhibit-84 came to be rejected, wherein the petitioner has sought to

change his case for specific performance in the plaint from that oral agreement to the written agreement. Learned trial Court while rejecting the application has observed that once the said prayer for amendment is rejected, the production of photo copy of the receipt dated 27/03/1996 comes under shadow.

4. If the observations made by learned trial Court are tested in the light of submissions made by Mr. Katneshwarkar, it is required to be noted that foundation on which reliance is placed by learned Counsel for the petitioner as regards existence of photo copy of receipt dated 27/03/1996 is concerned, in my opinion, that is not sufficiently established, as foundation in addition to above i.e. pleadings should have been laid by sufficient evidence from an independent witness about existence of such document.

5. As such, in my opinion, the order impugned rejecting the request of the petitioner to lead secondary evidence does not call for any interference. The writ petition fails, same stands dismissed.

[N.W. SAMBRE, J.]