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

WRIT PETITION NO. 3046 OF 2015

Manjitrao Mahipatrao Pawar,
Age: 62 years, Occu: Agriculture,
R/o. Village Jalwa, Tq. Phullambri,
Dist. Aurangabad

..PETITIONER
(Orig. Plaintiff)

VERSUS

1. Mainaji s/o Bhimaji Pawar,
Age: Major, Occu: Agriculture,
R/o. Village Jalwa, Tq. Phullambri,
Dist. Aurangabad

2. Nagorao s/o Bhimaji Pawar,
Age: Major, Occu: Agriculture,
R/o. Village Jalwa, Tq. Phullambri,
Dist. Aurangabad

..RESPONDENTS

Mr R. K. Khandelwal, Advocate for petitioner;
Mr S. D. Hiwrekar, Advocate for respondents

CORAM : N.W. SAMBRE, J.

DATE : 18th November, 2015

ORAL ORDER :

In Regular Civil Suit No.400 of 2007 (renumbered as Regular Civil Suit No.74 of 2008), after conclusion of evidence of the petitioner – plaintiff and the defendants, the Trial Court framed an additional issue on 3rd May, 2014, in relation to possession of the suit land, ad measuring 1 Hectare 3 Rs. Further trial in the matter of proving the said additional issue is yet to progress and during this period, the petitioner – plaintiff moved an application Exh.85, seeking permission to place on record sale deed

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bearing No.2066/1987, dated 14th May, 1987, which request came to be turned down on 6th January, 2015. Thus, the present petition.

2. Mr Khandelwal, learned Counsel appearing on behalf of the petitioner, while questioning the legality of the order impugned, would urge that for proving the issue of possession of the plaintiff, the document of sale deed, sought to be placed on record, itself is an important piece of evidence. According to him, if the document is permitted to be placed on record, the respondents – defendants will not be put to any prejudice, as they will get appropriate right to rebut the same.

3. While opposing the prayer, Mr Hiwrekar, learned Counsel appearing on behalf of the respondents, would urge that the document is sought to be produced at a belated stage, that too at the conclusion of the trial and the said document, i.e. sale deed has hardly any relevance in the matter, as the same is not pertaining to the disputed property. According to him, the petition is liable to be rejected.

4. Having considered the rival submissions, it is noted that after conclusion of the evidence of the respective parties, the Court has framed an additional issue on 3rd May, 2014 and the trial, pursuant to the additional issue, is yet to be concluded. The parties are yet to record their evidence on the said additional issue and at this stage, in my opinion, the right of the petitioner to produce the document in question cannot be denied, just because the trial *qua* the earlier issues has reached to the stage of

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arguments. Apart therefrom, the legality and validity of the alleged sale deed, as an issue, could be gone into at the further stage of the suit, after considering the evidence.

5. In view of above, in my opinion, the order impugned herein is not sustainable. I, therefore, pass the following order :-

The order dated 6th January, 2015, passed by Civil Judge Junior Division, Phulambri, Dist. Aurangabad, below Exh.85, in Regular Civil Suit No.74 of 2008, is quashed and set aside.

The application at Exh.85, seeking permission to place on record the document of sale deed dated 14th May, 1987, stands allowed, subject to payment of costs of Rs.1,500/-, to be deposited in the Trial Court, within a period of two weeks from today. On deposit of costs, the respondents are permitted to withdraw the same.

Writ Petition stands allowed in above terms.

(N.W. SAMBRE, J.)

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