

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

WRIT PETITION NO.6415 OF 2014

Syed Pasha s/o Syed Usman,
Age 72 years, Occu.Agriculture,
Residing at Devmurthi,
Taluka and District Jalna

.. Petitioner

Versus

Munnibee w/o Shaikh Rahim,
Age 67 years, Occu.Household,
Residing at Chadhan Jera, Jalna,
Taluka and District Jalna

.. Respondent

Mr Hemant Surve, Advocate for petitioner
Mr N.J.Pahune Patil, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 9th January 2015

PER COURT

1. Heard Mr Surve, learned Counsel for the petitioner – defendant.
2. The defendant moved an application for leading secondary evidence pursuant to the provisions of Section 63 of the Evidence Act, which is rejected by the order impugned dated 27th June 2014 passed below Exh.73 in R.C.S.No.558/2012, by the 2nd Joint Civil Judge, Junior Division, Jalna.
3. Learned Counsel for the petitioner – defendant submits that this Court, by an order dated 29th April 2014 in Writ Petition No.3454 of 2014 had granted liberty to the petitioner – defendant to take out an application, as a consequence of which application Exh.73 was filed seeking permission to lead secondary evidence. In his submission, the said application is rejected on the grounds, (a) that the defendant

No.1, in his cross-examination has admitted that the original deed is in his favour; and (b) that the other part of the evidence of defendant No.1 once accepted, a part to the extent of objected by the petitioner, cannot be permitted to be designed on the health ground of the petitioner.

4. Having considered the contentions of Mr Surve, it is noticed that though this Court had granted an opportunity to the present petitioner to move an application for leading secondary evidence, however, such application was required to be considered by the Court below on its own merits and upon satisfaction of the requirement of Section 65 of the Evidence Act.

5. After perusing the order impugned, it is noticed that the learned trial Court has given elaborate reasons for rejecting the said application.

6. In my opinion, no illegality is noticed. As such, writ petition fails and stands rejected.

7. At this stage, Mr Surve, learned Counsel for the petitioner submits that since the copy of the document is already on record, the same can be referred only for the purpose of reading in evidence. The said prayer can be considered by the learned trial Court at an appropriate stage, if so permissible in law.

8. The observations made in the order impugned, so also in the present order shall not prejudice the final hearing of the suit.

(N.W. SAMBRE, J.)

(vvr/6415.14wp)