

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

**WRIT PETITION NO. 8634 OF 2014
WITH
CIVIL APPLICATION NO. 4338 OF 2015**

1. Ushabai w/o Bhausasheb Shinde,
Age: 51 years, Occ: Household,
R/o. Bel Pimpalgaon, Tq. Newasa,
Dist. Ahmednagar.
2. Ranjana w/o Vasant Ghorpade,
Age: 51 years, Occ: Household,
R/o. Siral Chinchodi, Tq. Pathardi,
Dist. Ahmednagar.
3. Padma w/o Ashok Wabale,
Age: 41 years, Occ: Household,
R/o. Antarwali, Tq. Newasa,
Dist. Ahmednagar.
4. Hirabai w/o Madhukar Ghorpade,
Age: 36 years, Occ: Household,
R/o. Siral Chinchodi, Tq. Pathardi,
Dist. Ahmednagar.
5. Lilabai w/o Sahebrao Cahvan,
Age: 56 years, Occ: Household,
R/o. Khalal Pimpri, Tq. Newada,
Dist. Ahmednagar,
Through its General Power of Attorney
holder-
Shri. Bhausasheb Bappa Shinde,
Age: 58 years, Occ: Agri.,
R/o. Bel Pimpalgaon, Tq. Newasa,
Dist. Ahmednagar.

...Petitioners

versus

1. Shridhar s/o Narayanrao Kasar,
Age: --years, Occ: Agri.,
R/o. Kukana, Tq. Newasa,
Dist. Ahmednagar.
2. Babasaheb Ashruba Shelke,
Age: --years, Occ: Agri.,

3. Radhakisan Ashruba Shelke,
Age: --years, Occ: Agri.,
4. Bhagwan Ashruba Shelke,
Age: --years, Occ: Agri.,
5. Parubai w/o Ashruba Shelke,
Age: --years, Occ: Household,
6. Kamalbai w/o Ramchandra Kadam,
Age:--years, Occ: Household,

R/o. 2 to 6 Antarwali, Tq. Newasa,
Dist. Ahmednagar.

...Respondents

.....
Mr. B.G. Sagade , Advocate for petitioners.
Mr. H.D. Deshmukh, Advocate for respondent No.1.
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CORAM : N.W. SAMBRE, J.

DATE : 15TH APRIL, 2015

ORAL ORDER :

An application Exhibit-45 moved by the power of attorney holder seeking permission of the Court to lead evidence is rejected by the order impugned dated 30/07/2014 passed by the Joint Civil Judge, Junior Division, Newasa.

2. Learned Counsel for the petitioners-plaintiffs would urge that the permission is rejected on untenable ground, as according to him, extent of evidence that could be permissible to be adduced and accepted in the civil suit is required to be decided by the trial Court at

the time of appreciation of evidence. He would urge that the evidence of the present petitioners can be scrutinized having regard to the law laid down by the Apex Court in the matter of **S. Kesri Hanuman Goud vs. Anjuman Jehan** reported in **2013(3) ALL MR 196**.

3. The contentions are opposed by learned Counsel for respondent-defendant on the ground that the execution of sale deed by petitioner No.1 is purely an act within knowledge of the said petitioner and same has to be established by the petitioner No.1 by entering into witness box. According to him, the trial Court has rightly rejected the claim.

4. Having considered the contentions of the parties, it is noticed that admittedly plaintiff Nos. 2,3,4 and 5 are real sisters of plaintiff No.1 and one Bhausahab, who is husband of plaintiff No.1 holds power of attorney for all the plaintiffs. It is always open for such power of attorney holder to depose in favour of claim made in the plaint to the extent of facts which are within his knowledge.

5. The limitations as are prescribed by the Apex Court in the matter of **S. Kesri Hanuman Goud** cited supra are also required to be taken into account while appreciating the evidence of such

party, in case if the party is permitted to depose in favour of the claim in the capacity of power of attorney holder.

6. In that view of the matter, in my opinion, the order dated 30/07/2014 passed by the Court below is not sustainable and is set aside.

7. The application Exhibit-45 stands granted, subject to limitations as are prescribed by the Apex Court in the matter of ***S. Kesri Hanuman Goud*** (supra) and it shall be open for the trial Court to consider and appreciate the evidence of power of attorney holder to the extent of admissibility of the same in law.

8. The writ petition stands disposed of in above terms.

9. In view of disposal of the petition, civil application does not survive, same stands disposed of accordingly.

[N.W. SAMBRE, J.]