

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2012 OF 2012

Smt. Sagunabai S. Suryavanshi .. Petitioner.
V/s.
Smt. Yamabai alias Yamunabai B. Kadam
since deceased through her L.R.
1A- Govind Bl Kadam (Patil)
& Others .. Respondents.

Mr. Ruturaj Pawar i/b. Mr. S. S. Patwardhan, for the Petitioner.

CORAM: G.S.KULKARNI,J.

DATE : 26th FEBRUARY, 2015.

P.C:-

This Writ Petition is today listed for admission. Learned Counsel for the Petitioner has made submissions in assailing impugned order dated 11 November, 2011 passed by the learned Civil Judge, Junior Division, Malkapur- Shahuwadi. By the impugned order, the learned Trial Judge has rejected an application dated 7 December, 2010 filed by the Petitioner/Plaintiff to bring on record secondary evidence namely – a copy of a document dated 8th June, 1983 stated to be a Partition-cum-Will deed.

2 The Civil Suit in question was filed by the Petitioner on 1 March 1996. On 28th September, 2006, almost ten years after the filing of the suit, the Petitioner moved an application for amendment of the plaint to bring on record a Partition-cum-Will deed dated 8 June, 1983. The application was allowed by an order dated 14th June, 2007 passed by the

Trial Court. The Petitioner thereafter led her evidence and was cross examined on behalf of the Defendants/Respondents. In the cross examination, the Petitioner deposed in respect of the Partition-cum-Will deed dated 8th June, 1983 and has stated that she had filed a copy of the said document and she had knowledge of the same. After the cross examination was completed, the Petitioner moved the application in question, to prove by way of secondary evidence, the said Partition-cum-Will deed dated 8th June, 1983, a copy of which is claimed to be available with the Petitioner.

3 I have gone through the said application filed on behalf of the Petitioner before Trial Court, the Respondent's reply to the said application and the impugned order. This application is moved by the Petitioner after the cross examination of the Petitioner was completed. It is also not disputed that the Petitioner had filed an application on 20th August, 2006, seeking amendment of the plaint to bring the said document on record. This application was allowed on 14th June, 2007. After taking up this position, the Petitioner led evidence on the basis of this document as relied upon by the Petitioner and was subjected to cross examination on the same. Certain admissions are elicited on this document in the cross examination.

4 In view of this position, the Petitioner could not have moved the application in question which would have an adverse impact on the admissions which are rendered by the Petitioners. The application in question was moved after a period of 14 years from the filing of the suit. The Petitioner had ample opportunity to lead evidence on this document. Now, after the cross examination is over , the Petitioner is attempting to

prove the document by secondary evidence which is not a certified copy. It is not the case that the Petitioner has proved the original of this document to have existed but the same is lost or misplaced. It is the Respondent's case that the original of the said document is not in their possession. The learned Trial Judge has considered in detail all facts while rejecting the application filed by the Petitioner. I do not find anything illegal and/or perverse in the orders passed by the learned Trial Judge.

5 **Writ Petition** is devoid of merits and is summarily **rejected**.
No order as to costs.

6 It may be observed that the suit pertains to the year 1996. It would be appropriate that if the learned Trial Judge endeavors to dispose of the same as expeditiously as possible, if the same is not already disposed of.

(G.S.KULKARNI,J.)