

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3034 OF 2015

Dr. Jayant Bhalchandra Soman

.. Petitioner

Versus

Shri. Shirish @ Suresh Anant Mane

.. Respondent

Mr. S. C. Wakankar, for the Petitioner.

Mr. Vishal Kanade i/by Mr. S. S. Raut, for the Respondent.

CORAM : R.M. SAVANT, J.

DATE : 17th NOVEMBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 21.11.2014 passed by the Learned District Judge-14, Pune, by which order the application Exh.3 for leading additional evidence by having recourse to Order 41 Rule 27 of the CPC came to be rejected. The additional evidence sought to be led by the Petitioner who claims to be the landlord of the premises in question is by way of a Will executed by his paternal aunt Smt. Tarabai Vasudeo Damle. The said Will according to the Petitioner has been executed on 24.08.1998 and was at the relevant time with the Maharashtra Executor Trust who was named as the executor of the Will. The Trial Court has non-suited the Petitioner on the ground that the Petitioner has not been able to prove that he is the landlord of the suit

premises. The instant application Exh.3 which has been filed in the Appeal which has been filed against the decree of dismissal passed by the Trial Court is founded on the fact that the Petitioner could not produce the said document as the same was in the custody of the Maharashtra Executor Trust for giving effect to it.

2. In so far as the additional evidence is concerned, the same can be allowed to be led if the pre-requisites mentioned in the said provision are satisfied. In the instant case, having regard to the application filed by the Petitioner, the Petitioner's case would fall within Order 41 Rule 27(1)(aa) of the said provision which postulates that unless the Appellant satisfies the due diligent test, the additional evidence cannot be permitted to be led. In the instant case, the reasons mentioned by the Petitioner for non-production of the document at the trial stage did not commend acceptance to the Appellate Court. The Appellate Court was therefore of the view that since the pre-requisite for leading secondary evidence as postulated by Order 41 Rule 27 has not been complied with by the Petitioner, the application was required to be rejected. It is required to be noted that the Petitioner has been cross-examined in the trial on behalf of the Defendant on the point of his title to the premises in question. Notwithstanding the same, the Petitioner did not choose to produce the document i.e. the Will at the trial stage. The fact that the document was

with the Maharashtra Executor Trust was not a situation, wherein it was not possible for the Petitioner to produce the said Will or at least a true copy of the said Will. It would therefore have to be said that the Petitioner did not choose to produce the document at the trial stage and only after a finding has been recorded by the Trial Court has now chosen to bring to light the Will allegedly executed by Smt. Tarabai Vasudeo Damle. In my view, the impugned order does not suffer from any error of jurisdiction on the part of the Trial Court nor any other illegality or infirmity for this Court to interfere in its Writ Jurisdiction. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]