

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

WRIT PETITION STAMP NO.21493 OF 2015

Sandip Kashinath Patil and ors. : Petitioners
versus
Vivek Kashinath Patil and anr. : Respondents.

Mr. Omkar V Warange for the Petitioners
Mr. P S Dani, Senior Advocate, i/by Mr. Mangesh Deshmukh for the
Petitioners.

CORAM : R. M. SAVANT, J.
DATE : 26th August 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 11/3/2015 as also the order dated 15/07/2015 passed by the learned Civil Judge, Senior Division, Palghar by the first order the Application (Exhibit 67) filed by the Petitioners – original Plaintiffs came to be rejected, and by the second order the Application (Exhibits 97 and 98) filed by the Petitioners – Plaintiffs came to be rejected.

2 By the said Application (Exhibit 67) two reliefs were sought, one is to permit the Plaintiffs to lead secondary evidence in respect of family arrangements dated 7/1/1981 and 11/4/1984. In so far as the Application (Exhibit 67) for leading secondary evidence is concerned, the Trial Court has found fault with the Plaintiffs on the ground that the pre-requisites of Section

65 of the Evidence Act have not been complied with by the Plaintiffs and therefore, the application could not be allowed.

3 After arguing for some time, the learned counsel for the Petitioners – original Plaintiffs, on instructions, seeks withdrawal of the said Application (Exhibit 67) with liberty to file a proper application for leading secondary evidence. To this the learned Senior Counsel appearing for the Respondents – original Defendants Shri P S Dani has no objection.

4 In view of the said statement made by the learned counsel appearing for the Petitioners – original Plaintiffs, there is now no warrant to consider the impugned order dated 11/3/2015 on merits, which is accordingly set aside. The Petitioners – original Plaintiffs would be at liberty to file a fresh application for leading secondary evidence which would be tried on its own merits and in accordance with law.

5 In so far as the order dated 15/7/2015 passed on the Applications (Exhibits 97 and 98) is concerned, the same is founded on the rejection of the Application (Exhibit 67). In view of the order passed in respect of the Application (Exhibit 67), the challenge to the order passed on the Applications (Exhibits 97 and 98) no more survives. The said order dated 15/7/2015 to also accordingly stand set aside.

6 With the liberty as aforesaid, the above Writ Petition to stand
disposed of.

[R.M.SAVANT, J]