

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****BENCH AT AURANGABAD****917 WRIT PETITION NO. 1109 OF 2015****JALINDAR JYOTIBUA NIKAM AND OTHERS****VERSUS****CHAYABAI DEVIDAS MANE AND OTHERS****...****Advocate for Petitioners:Mr.Doke Kishor R & Mr.Doke S.K.****CORAM : V. K. JADHAV, J.****DATE : 20<sup>th</sup> January, 2016****PER COURT :**

1. The petitioners are the original defendant Nos. 2 to 8, 9-D, 10 and 11 in RCS No.85/2000 pending before the Joint Civil Judge, Junior Division, Bhoom. They have filed application at Exh.280 for permission to lead secondary evidence. They have filed certified copies of Pot Hissa Survey map and Form No.4 of certain survey nos. of village Sukta, prepared by the Government in the year 1973-74. It is the case of the petitioners/original defendants that the said record was prepared by the Measurement Officer one Dashrath Kumbhar, who is now no more. The petitioners/defendants could not give primary evidence about Pot Hissa Survey Map and Form No.4 in respect of Survey Nos. 269, 270, 271, 293, 294 of village Sukta and permission is sought to lead secondary evidence in respect of those documents.

2. The learned counsel for the petitioners submits that as per provisions of Section 65 of the Indian Evidence Act, when the original is a public document within the meaning of section 74, secondary evidence in the form of certified copies of the same is permissible. Learned counsel submits that the trial court has erroneously rejected the application with observation that original documents are required to be produced before the Court as primary evidence and if original document has been destroyed or lost, then only secondary evidence is permissible.

3. Even though the respondents are duly served, none appears for them.

4. It appears that the petitioners/ original defendants have produced on record certified copies of Pot Hissa Survey Map and Form No.4 in respect of Survey Nos. 269, 270, 271, 293, 294 of village Sukta prepared by the Government in the year 1973-74 alongwith list Exh.272. Thus, in view of section 65 of the Indian Evidence Act, secondary evidence relating to public document is permissible in view of specific clause (e) to Section 65 of the Indian Evidence Act. Even though the trial Court has reproduced the entire section 65 in its

order, erroneously rejected the application with some unwanted observations. Hence following order:

**O R D E R**

- i. Writ petition is hereby allowed.
  - ii. The order dated 18.11.2014 passed below Exh. 280 in RCS No. 85 of 2000 is hereby quashed and set aside.
  - iii. Application Exh. 280 filed in RCS No.85/2000 is hereby allowed.
  - iv. Pursuant to order passed by this Court dated 11th February, 2015, the petitioners, in order to show *bonafides*, as directed by this Court, deposited Rs.25,000/- before the trial Court. The petitioners are permitted to withdraw the same.
5. Writ petition is disposed of accordingly. No costs.

( V. K. JADHAV, J. )

JPC