

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

WRIT PETITION NO. 9060 OF 2016

Sou. Dagdubai Balasaheb Sorte
and Ors.

..Petitioners.

Vs

Shri Dashrath Baliram Kumbhar

.. Respondent

Mr. Manish Gaikwad i/b T.P.Deshmukh, Advocate for Petitioner.
Mr.U.B. Nikam, Advocate for Respondent.

CORAM : R.G.KETKAR,J.
DATE : 05/12/2016

PC:

1. Heard Mr.Manish Gaikwad, learned counsel for the petitioner and Mr.U.B.Nikam, learned counsel for the respondent at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 31.12.2015 passed by the learned Civil Judge, Jr.Dn., Karmala below Exhibit 88 in R.C.S.No.289 of 2011. By that order the learned trial Judge allowed the application made by the respondent-plaintiff for examining the witness on the original sale deed to prove its execution.
3. Mr. Nikam has tendered certified copy of deposition of Navnath Udhav Maske. He submitted that in pursuance of the impugned order, the plaintiff has examined PW 3 Navnath Maske for proving execution of the sale deed. On behalf of the

defendant, the said witness was not cross examined. The learned trial Judge accepted his evidence without cross examination. Certified copy of evidence of PW 3-Navnath Maske is taken on record and marked "X" for identification.

4. Mr.Nikam submitted that as the impugned order is already implemented by examining the witness, this petition has become infructuous.

5. As the evidence is already examined in pursuance of the impugned order, this petition is rendered infructuous and is accordingly disposed of. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)