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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12167 OF 2015

Subrao Jayram Mandale	...	Petitioner
vs.		
Mahadeo Pandurang Mandale	...	Respondent

Mrs. Shama Mulla, Advocate for the petitioner.

CORAM: MRS. MRIDULA BHATKAR, J.
DATE : AUGUST 20, 2016.

P.C.

This Writ Petition under Article 227 of the Constitution of India is directed against the order dated 31st July, 2015 passed below Exhibit 15. It is to be noted that in the prayer clause (a), the petitioner has also mentioned that he is challenging the order dated 11th January, 2013 below Exhibit 15. However, the learned counsel for the petitioner has explained that there is typographical mistake and no such order dated 11th January, 2013 is challenged herein. Exhibit 15 is an application filed under Order 41 Rule 27 of Code of Civil Procedure for seeking permission to adduce additional evidence at the appellate stage. The respondent in the petition has filed Regular Civil Suit No. 28 of 2000 for perpetual injunction which is decreed

by the judgment and order dated 18th December, 2008 against which Regular Civil Appeal No. 44 of 2009 was filed by the present petitioner/original defendant. At the time of trial, a sale deed, i.e., Exhibit 46 was relied by the respondent/plaintiff. The petitioner is disputing the said sale deed Exhibit 46 and placed Application for leading additional evidence that the thumb impression on the said sale deed is to be sent to the finger print expert and to call his report.

2. The learned counsel for the petitioner has submitted that the order passed by the learned District Judge, Sangli rejecting the said application is not correct. The said evidence could not be tendered before the trial Court due to inadvertence and therefore, the petitioner be allowed to lead the said evidence at the appellate stage .

3. Perused the impugned order. Read the reasoning given by the learned Judge especially in paragraph 11 of the said order. The petitioner had ample opportunity to lead evidence challenging the disputed thumb impression on Exhibit 46. The learned Judge has taken a view that the petitioner was negligent and the reason given for seeking permission to

lead further evidence is not satisfactory. I do not find any illegality in the view taken by the learned Judge while rejecting the said application. Hence, Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)