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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2765 OF 2016

Appa s/o Jayawanta Ghute
Age – 65 years, Occ – Agriculture
R/o Ghutewadi (Suregaon)
Taluka – Shrigonda, District - Ahmednagar

PETITIONER

VERSUS

1. Jayawanta s/o Shripati Ghute
(Died through LRs) RESPONDENTS
- 1A. Sulabai Bapurao Mandge
Age – Major, Occ – Household
R/o Ganesh Nagar, Yerwadi,
Taluka – Haweli, District – Pune
- 1B. Badambai Balasaheb Sathe,
Age – Major, Occ – Household
R/o Narayandoho,
Taluka and District – Ahmednagar
- 1C. Sugandhabai Maruti Jadhav
Age – Major, Occ – Household
R/o Hivarezare,
Taluka and District – Ahmednagar
2. Maruti Pandharinath Jadhav
(Died through LRS)
- 2A. Sugandhabai Maruti Jadhav
Age – Major, Occ – Household
R/o Hivarezare, Taluka and District – Ahmednagar
3. Khandu Narayan Khengat,
Age – 65 years, Occ – Agriculture
R/o Baburdi Chobhe
Taluka and District – Ahmednagar
4. Dada Baburao Rode
(Died through LRs)

- 4A. Laxman Dada Rode,
Age – Major, Occ – Agriculture
R/o At post Suregaon,
Taluka – Shrigonda, District – Ahmednagar
- 4B. Chandrakant Dada Rode,
Age – Major, Occ – Agriculture
R/o At Post Suregaon,
Taluka – Shrigonda, District – Ahmednagar
- 4C. Sushila Anna Shinde,
Age – Major, Occ – Household
R/o Chikhali Koregaon,
Taluka and District – Ahmednagar
- 4D. Babai Vyankatrao Bhujbal
Age – Major, Occ – Household
R/o Hiradgaon, Taluka – Shrigonda
District – Ahmednagar
- 4E. Chabubai Khandu Khengat
Age – Major, Occ – Household
R/o Baburdi Chobhe
Taluka and District – Ahmednagar
- 4F. Viju Devidas Mhaske
Age – Major, Occ – Household
R/o Chandgaon, Taluka – Shrigonda
District – Ahmednagar
5. Savaleram Jaywanta Ghute (DISMISSED)
Age – 63 years, Occ – Agriculture
R/o Ghutewadi (Suregaon)
Taluka – Shrigonda, District – Ahmednagar
6. Laxman Martand Rode
Age – 62 years, Occ – Pensioner and Agriculture
R/o Ghutewadi (Suregaon)
Taluka – Shrigonda, District – Ahmednagar

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Mr. Sanjay V. Mundhe, Advocate for the petitioner
Mr. Rahul R. Karpe, Advocate for respondent No.6
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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 23rd AUGUST, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the appearing parties.

2. An application has been moved by present petitioner at Exhibit-129 in Regular Civil Suit No.257 of 1979 seeking permission to lead secondary evidence in respect of two sale deeds, certified copies of which had been placed on record at Exhibits-30 and 82. Contents of the application Exhibit-129 do depict that the original copies of sale deeds would not be in possession of the plaintiff and the application does make reference to that the documents were supposed to be in possession of other persons. Both the documents are more than 30 year old. For said purpose and since originals could not be produced before court, application Exhibit-129 had been moved seeking permission to lead secondary evidence in respect of two documents.

3. Defendant No. 6, who is stated to be contesting defendant, has, as a matter of fact, no particular resistance to grant permission to lead secondary evidence as may appear from the

say filed to application Exhibit-129. In the present matter it may be noted that apart from respondent No. 6, no other respondent has put in appearance, though served.

4. In view of aforesaid Mr. Mundhe, learned advocate for the petitioner has submitted that the application has been rejected taking too pedantic and technical view, for want of following procedure referable to section 66 of the Indian Evidence Act. He submits that may be, ostensibly, section 66 requires a notice being given, yet there are various contingencies which have been referred to in the same which let in secondary evidence doing away with the notice required. In the present case, it is evident that documents may not be traceable and / or those cannot be produced without delay and expense.

5. Mr. Karpe, learned advocate appearing for respondent No. 6 refers to that the court has observed that plaintiff is not in a position to show as to original is lost or destroyed and also it is not mentioned in the application that in whose possession the original document is.

6. However, although it is being so submitted, it may be taken into account that application to quite a fairly large extent, shows that documents are not in possession of the petitioner and

the provisions of section 65 of the Indian Evidence Act also refer to that secondary evidence can be let in if document is out of reach.

7. In the circumstances, while there does not appear to be any particular resistance to the request made under Exhibit-129, it appears to be expedient in the facts and circumstances of the case to eschew technical approach and grant the writ petition.

8. Having regard to aforesaid, writ petition is allowed. Order dated 19th November, 2014 on Exhibit-129 in Regular Civil suit No. 257 of 1979 passed by Civil Judge, Junior Division, Shrigonda is set aside. Application Exhibit-129 stands allowed. Rule is made absolute in aforesaid terms.

[SUNIL P. DESHMUKH, J.]