

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11807 OF 2017

PANDURANG SHANKAR KHARADE
VERSUS
DHARMARAJ DATTU NAGTILAK

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Advocate for Petitioners : Mr More P. P.

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CORAM : V.K. JADHAV, J.

Dated: November 01, 2017

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PER COURT :-

1. Being aggrieved by the order passed by the Joint Civil Judge J.D., Latur dated 31.1.2017 below exh.27 in Special Civil Suit No.9/2015, original defendant has preferred this writ petition.

2. Brief facts, giving rise to the present writ petition are as under :-

Respondent has instituted a suit for declaration of ownership and perpetual injunction in respect of the landed property. Petitioner-original defendant has strongly resisted the suit by filing written statement. During the pendency of the said suit, respondent-original plaintiff has filed an application below exh.27

for leading secondary evidence in the form of certified copy of the registered sale deed. Petitioner has strongly resisted the said application by filing his say. Learned Civil judge S.D., Latur by its impugned order has allowed the said application. Hence, this writ petition.

3. Learned counsel for the petitioner submits that, best evidence in the nature of the case shall be produced and section 65 of the Evidence Act deals with the proof of contents of the documents tendered in evidence. Learned counsel submits that, section 65 of the evidence Act permits secondary evidence to be given of the existence, condition or contents of the documents under the circumstances mentioned therein. The conditions laid down in the said section must be fulfilled before secondary evidence can be admitted. Learned counsel submits that, there is no foundation to grant permission to lead secondary evidence in the pleadings itself. It is not the pleadings of the respondent-original plaintiff that original sale deed is not available.

4. In the instant case, petitioner-original defendant has simply made a statement in the application Exh.27 that original sale deed is not available and from the said statement in the application, learned Judge of the trial court has allowed the application Exh.27.

5. Learned counsel for the petitioner, in order to substantiate his contention placed his reliance on a judgment in case of **Yeshwant Rambhau Chondhe Vs. Vilas Bapurao Shinde** reported in **2007 (5) ALL MR 554**.

6. On careful perusal of the impugned order, it appears that, aforesaid document for which permission is sought to lead secondary evidence, is a certified copy of the registered sale deed. It also appears that, petitioner-original defendant has not denied execution of the sale deed, but, according to his pleadings said sale deed has been executed nominally. In the light of above, I do not find any substance in this writ petition. The learned Judge of the trial court has rightly allowed the

application exh.27. No interference is required. Writ
Petition is accordingly disposed of. No costs.

sd/-

(**V.K. JADHAV, J.**)

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aaa/-