

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

WRIT PETITION NO. 8832 OF 2016

Abdul Salim s/o Abdul Samad
age 76 years, occ. Retired Headmaster
& Secretary of Momin Education Society
Nanded, R/o Mohalla Sayadan
Nanded, Tq. & Dist. Nanded

.. PETITIONER

VERSUS

1. The Education Officer (Primary)
Zilla Parishad, Nanded
Tq. & Dist. Nanded.
2. The Extension Officer (Education)
Education Section No. 5,
Zilla Parishad, Nanded
Tq. & Dist. Nanded
3. Syed Yunus s/o S.M. Yahiya
age 65 years, occ. Pensioner
r/o ND-2, CIDCO, Nanded
Tq. & Dist. Nanded.
4. Iftekhar Mohd. Khan s/o Nor Mohd. Khan
age 54 years, occ. Business
r/o ND-2, CIDCO, Nanded
Tq. & Dist. Nanded

.. RESPONDENTS

Mr. V.J. Dhage, advocate for petitioner.
Mrs. Yogita Kshirsagar, advocate for respondents 1 and 2.
Mr. Shaikh Mujtaba Gulam Mustafa, advocate for respondent no. 3.

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**CORAM : S. B. SHUKRE, J.
DATE : 16th JANUARY, 2017.**

ORAL JUDGMENT :

1. Heard.
2. Rule. Rule made returnable forthwith. Heard finally by consent.

3. This writ petition takes exception to the order dated 15.07.2016 passed by the learned Civil Judge, Senior Division, Nanded rejecting petitioner's application for calling record and proceedings.

4. So far as rejection of application seeking to call for the relevant record is concerned, I do not think that any patent illegality has been committed by the learned Civil Judge. When respondents 1 and 2 have admitted that the relevant record is untraceable, the question of once again issuing direction to them to produce the same record before the Court would not arise. At the same time, plaintiff cannot be called upon to lead secondary evidence in respect of document forming part of the lost record for the simple reason that the document of the concerned party would have to be proved only by the concerned party and if, the concerned party does not seek permission of the Court to lead secondary evidence to prove that document, plaintiff cannot be called upon to lead secondary evidence. It is for the party whose document it is, to prove it either by primary evidence or secondary evidence, depending upon the facts and circumstances of each case. If the party on whom the burden lies to prove the document does not prove it by either of the modes of proving it, necessary inference could be drawn by the Court.

5. In this view of the matter, I am inclined to partly allow this petition. It is directed that the observation of the learned Civil Judge made in the impugned order that plaintiffs can lead secondary evidence in respect of the order dated 07.07.1997 is hereby removed from the impugned order and it is further directed that if at all it is to be lead, it would have be lead by

fulfilling necessary conditions. Rest of the impugned order is maintained.

Rule is made absolute in above terms. Parties to bear their own cost.

(S. B. SHUKRE)
JUDGE

dyb