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

WRIT PETITION NO.8979 OF 2016

Balasaheb s/o Somnathappa Banale,
Age: 44 years, Occ: Agri.,
R/o. Village Pokhari, Tq. Ambajogai,
Dist. Beed. ..PETITIONER

VERSUS

1. The State of Maharashtra,
Through Collector, Beed.
2. Deputy Director of Land Records
Demadi Maha, Aurangabad,
Dist. Aurangabad.
3. District Inspector of Land Records
Beed, District Beed.
4. Taluka Inspector of Land Records
Ambajogai, Dist. Beed.
5. Deputy Collector, Ambajogai,
Dist. Beed.
6. Tahsildar, Tahsil Office,
Ambajogai, Dist. Beed.
7. Ashok @ Chimnappa s/o Vishwanathappa
Banale, Age: Major, Occ: Agri.,
& Business,
8. Smt. Bhagirtibai w/o Vishwanathappa
Banale, Age: Major, Occ: Household,
9. Bhimashankar s/o Vishwanathappa
Banale, Age: Major, Occ: Agri.,
10. Umashankar s/o Vishwanathappa
Banale, Age: Major, Occ: Agri.,

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11. Mandabai w/o Ashok @ Chimnappa
Banale, Age: Major, Occ: Household

Res. No. 7 to 11, R/o. Near
Seema Lodge, Prashant Nagar,
Ambajogai, Dist. Beed. ..RESPONDENTS

Mr T.G. Gaikwad, Advocate for petitioner;
Mr S.M. Ganachari, A.G.P. for respondent Nos.1 to
6;
Mr S.V. Natu, Advocate for respondent No.10

CORAM : NITIN W. SAMBRE, J.

DATE : 6th SEPTEMBER, 2017

ORAL ORDER :

The petitioner filed Special Civil Suit No. 8 of 2009, which was subsequently converted into Regular Civil Suit No. 166 of 2012 for declaration of ownership, cancellation of sale deed dated 17th July, 2014 in favour of the defendants. The suit came to be resisted by the defendants-respondents and the plaintiff, after having completed his evidence filed evidence closed pursis. The defendants, thereafter, have tendered examination-in-chief, at such stage, the plaintiff-petitioner filed application below Exhibit-121

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seeking permission to examine Gramsevak as witness so as to prove that his father Somnathappa expired on 8th December, 1973. The said prayer is rejected by learned Civil Judge, Senior Division, Ambajogai by the impugned order dated 2nd July, 2016. As such, this petition.

2. Mr. Gaikwad, learned Counsel for the plaintiff-petitioner would urge that since the sale deed is subsequent to the death of his father Somnathappa, the evidence of Gramsevak is necessary to prove death certificate, which is already produced on record. According to him, even though the plaintiff has completed his side of evidence and has given evidence closed pursis, the evidence of Gramsevak goes to the root of the matter so as to decide the actual controversy involved, as such, in the interest of justice, it is necessary that he be permitted to examine the said Gramsevak. In addition, Mr. Gaikwad, learned Counsel would urge that the defendants will be at liberty to cross-examine the said witness and no prejudice will be

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caused to the defendant, if the application is granted.

3. Per contra, Mr. Natu, learned Counsel for respondent No.10 supported the order impugned and submits that even though the document was permitted to be produced on record in regard to death of Somnathappa, however, the trial Court rejected the prayer of examination of Gramsevak. According to him, it is by way of afterthought, recently petitioner incorporated the date of death of his father, with intention to create evidence. According to him, petitioner has produced the said document and sought examination of the witness who was never included in the list of witnesses nor any foundation to that effect is already laid.

4. Considered rival submissions. It is required to be noted that in 2009 the plaintiff has filed suit in question. At the time of filing suit, the plaintiff was aware of the fact that his father expired on 8th December, 1973 and as such,

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he could have produced death certificate of his father at that time only. However, what appears from the conduct of the petitioner is, he has tried to create evidence by approaching Grampanchayat office by tendering request that the death certificate be issued in his favour in relation to death of his father by recording date of death 8th December, 1973.

5. Gramsevak of Village Panchayat, from whose record learned Counsel for the respondents-defendants after conducting inquiry, has produced on record documents which speak of act of petitioner of creating evidence that too after period of about 35 years from the alleged date of death of father of petitioner. The Gramsevak has taken entry and issued certificate in favour of the plaintiff about date of death of father of the petitioner without taking resources to the prescribed procedure to that effect.

6. It is clear case wherein it could be inferred that the plaintiff has tried to create and

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collect the said evidence so as to produce and read the same to the detriment/adverse interest of the defendants.

7. In the aforesaid background, the rejection of prayer as ordered by the learned trial Court, in my opinion, appears to be just and proper. No interference is warranted. As such, the petition fails and stands dismissed.

(**NITIN W. SAMBRE, J.**)

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