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

WRIT PETITION NO. 11982 OF 2016

Sadashiv s/o Dadarao Solunke,
Age: 57 years, Occ: Agri.,
R/o. Mohakhed, Tq. Dharur,
Dist. Beed.

..PETITIONER

VERSUS

Uttam s/o Tukaram Kulkarni,
Age: 62 years, Occ: Agri.,
R/o. Mohakhed, Tq. Dharur,
Dist. Beed.

..RESPONDENT

Mr B.S. Kudale, Advocate for petitioner;

CORAM : NITIN W. SAMBRE, J.

DATE : 29th NOVEMBER, 2017

ORAL ORDER :

In Regular Civil Suit No. 47 of 2009, the petitioner, claimed to be defendant, who filed counter claim with prayer for declaration of his title over the suit property. He tried to produce certified copies of sale deed in his favour and moved applications at Exhibits-131, 133 and 138. Exhibit-131 covers three copies of registered sale deed viz., 1256/1982, 1255/1982 and 1254 of 1982,

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whereas in Exhibits-133 and 138 permission to lead secondary evidence is sought only in respect of sale deed No. 1255 of 1982 and 1256 of 1982, as original sale deed in relation to No.1254 of 1982 was traced.

2. The petitioner examined one Shaikh Naim Shaikh Ahmed, Clerk from the office of Sub Registrar, Majalgaon so as to lay foundation. The submission of the petitioner is that the Court below, without appreciating that there is foundation pursuant to the scheme of Section 65(c) of the Indian Evidence Act, has rejected the prayer for recording of evidence by secondary mode.

3. The respondent though served, none appears.

4. The fact remains that the petitioner has produced certified copies of document viz., sale deed No.1255 of 1982 and 1256 of 1982 and has also laid foundation about loss of those documents by

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examining witness Shaikh Naim Shaikh Ahmed.

5. In the wake of above, having regard to the scheme under Section 65(c) of the Evidence Act, in my opinion, learned trial Court should have allowed the application permitting the petitioner to lead secondary evidence as prayed by him in application Exhibits-133 and 138.

6. As a consequence, present petition, in my opinion, needs to be allowed, by calling impugned order passed below Exhibits-131, 133 and 138 with further order that prayer made in the application Exhibit-138 for permission to lead secondary evidence stands allowed.

7. In view of above, no orders are required qua applications Exhibits-133 and 131.

8. The writ petition stands disposed of accordingly.

(NITIN W. SAMBRE, J.)