

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1095 OF 2015

Mahesh Girdharilal Madhyan and others .. **Petitioners**

Versus

M/s. Karandikar & Brothers,
Through Vinayak Vishwanath Karandikar
and others

.. **Respondents**

Shri Milind M. Patil (Beedkar), Advocate for the Petitioners.
Shri D. A. Madake h/f Shri S. Y. Mahajan, Advocate for
Respondent Nos. 1 to 3, 5 and 6.
Respondent No. 9 served.

CORAM : S. V. GANGAPURWALA, J.

DATE : 14th December, 2017

PER COURT :

1. The application seeking permission to adduce secondary evidence of the certified copy of the registered lease deed is rejected.

2. Mr. Patil (Beedkar), learned advocate for the petitioners submits that the registered lease deed was executed between the predecessor in title of the petitioners and the present respondents. The original lease deed is in possession of the present respondents. The petitioners had given a notice to the

respondents to produce the original lease deed. No reply was filed by the respondents. Thereafter application is given seeking permission to adduce secondary evidence. The same is rejected on altogether unsustainable grounds.

3. The learned advocate for the respondents supports the order and submits that the petitioners have not proved that the original lease deed is in possession of the present respondents. The respondents have denied the possession of the original lease deed. The petitioners can prove the factum of original lease deed either by bringing before the court the original lessor. It is for the petitioners to say on oath the factum of the original lease deed being in possession of the respondents. The court has considered that the application is pre-mature and rightly rejected.

4. It is not disputed that prior to the instant application the petitioners had issued notice to the respondents / defendants to produce the original lease deed. The defendant No. 1 did not give any reply to the said notice. It appears that the present defendants are the lessees. The secondary evidence sought is in

respect of the certified copy of the registered lease deed. No doubt the same is a private document. In an application given by the petitioners seeking permission to adduce secondary evidence the petitioners have specifically stated that the original lease deed is in possession of the defendants. Though in paragraph No. 7 of the say filed by the defendants the reference is made to the lease deed, however in the say it is not categorically and specifically denied that the lease deed is not in possession of the defendants.

5. In view of above, there was no impediment for the court to allow the petitioners to adduce secondary evidence in respect of the certified copy of the registered lease deed.

6. The impugned order as such is quashed and set aside. The application **Exhibit-73** in Special Civil Suit No. 2 of 2010 is allowed.

7. The writ petition is accordingly allowed. No costs.

[S. V. GANGAPURWALA, J.]