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

WRIT PETITION NO. 12644 OF 2016

1. Sukhdeo Kanhu Landge,
Age: 68 years, Occu: Agri.
2. Suryabhan Kanhu Landge,
Age: 57 years, Occu: Agri.
3. Gorakh Kanhu Landge,
Age: 50 years, Occu: Service
4. Smt. Dagadabai Kanhu Landge,
Age: 90 years, Occu: Household,

All R/o. Ghospuri, Tq. Nagar,
Dist. Ahmednagar

..PETITIONERS

VERSUS

1. Baban Kanhu Landge,
Age: 65 years, Occu: Labourer,
R/o. Khadki, Post Khandala,
Tq. Nagar, Dist. Ahmednagar
2. Gangadhar Kanhu Landge,
Age: 70 years, Occu: Agri.,
3. Bala Kanhu Landge,
Age: 60 years, Occu: Agri.
4. Nana Kanhu Landge,
Age: 60 years, Occu: Labourer,
R/o. Khadki, Tq. Nagar,
Dist. Ahmednagar
5. Smt. Bhagubai Daga Landge,
Age: 75 years, Occu: Household
6. Machindra Dada Landge,
Age: 50 years, Occu: Agri.
7. Rajendra Dada Landge,
Age: 42 years, Occu: Agri.

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8. Sou. Suman Vishwanath Late,
Age: 50 years, Occu: Household,
R/o. Kotul, Tq. Shrigonda,
Dist. Ahmednagar
9. Sou. Mirabai Balasaheb Kulat,
Age: 37 years, Occu: Household,
R/o. Burudgaon,
Tq. & Dist. Ahmednagar
10. Sou. Shakuntala Arjun Walke,
Age: 35 years, Occu: Agri.
11. Dattatraya Kisan Walke,
Age: 40 years, Occu: Agri.
12. Sou. Parubai Gangadhar Landge,
Age: 63 years, Occu: Household,

Respondent Nos.2,3 & 5 to 7
R/o. Ghospuri, Tq. Nagar,
Dist. Ahmednagar

..RESPONDENTS

Mr N. V. Gaware, Advocate for petitioners;
Mr R. R. Karpe, Advocate for respondent Nos.1 & 3

CORAM : NITIN W. SAMBRE, J.**DATE : 8th September, 2017****ORAL ORDER:**

In Regular Civil Suit No.685 of 2012 for partition and separate possession, based on the registered partition deed dated 12th June, 2000, petitioners-original defendants no.2, 4, 6 and 7 moved application (Exh.54) for permission to lead secondary evidence, which came to be rejected on 2nd September, 2016 by 5th Joint Civil Judge Senior Division, Ahmednagar. Thus, the present petition.

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2. The cause cited for rejection of the prayer was:

- (a) that, casual reasons are cited in application Exh.54 seeking permission to lead secondary evidence and
- (b) that, it is claimed in the evidence itself that the document i.e. registered partition deed was given in custody of defendant No.6.

3. Considered the prayer made in the application along with the pleadings and the resistance through pleadings made by respondent No.1- original plaintiff, who supports the impugned order. It is required to be noted from the original pleadings of the parties, particularly paragraph 7 of the written statement, wherein a specific reference is made by the defendants to the registered partition deed dated 12th June, 2000, based on which rejection of the claim for partition was sought. The said pleadings *prima facie* depict that the present petitioners-original defendants have laid foundation for the said plea in their defence.

4. Apart from above, the existence of partition dated 12th June, 2000 is not disputed by the plaintiff as is apparent from the plaint.

5. In the aforesaid background, the fact that the original document was lost and certified copy of the same, being a registered document be permitted to be brought on record and secondary evidence be permitted to

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be led in support of the said document sought by the present petitioners, in my opinion, is wrongly rejected by the learned Trial Court. In view thereof, I pass following order:-

The order dated 2nd September, 2016, passed by the learned 5th Joint Civil Judge, Senior Division, Ahmednagar, below Exh.54 in Regular Civil Suit No. 685 of 2012, is hereby quashed and set aside, subject to payment of costs of Rs.3,000/- (Rs. Three Thousand only) to the respondents, to be deposited in the Trial Court, within a period of three weeks from today, to which the respondents will be entitled.

Application Exh.54 stands allowed in terms of prayer made therein.

With above observations, petition stands disposed of.

(NITIN W. SAMBRE, J.)

amj