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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3871 OF 2017

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| 1. Navnath s/o Manik Gholap
Age - 36 years, Occ - Business
R/o Nanded Naka, Latur
Taluka and District - Latur | PETITIONERS |
| 2. Shivaji s/o Bapusing Thakur
Age - 36 years, Occ - Business,
R/o Moti Nagar, Latur
Taluka and District - Latur | |
| 3. Santosh s/o Trimbak Pete,
Age - 36 years, Occ - Service
R/o Nanded Naka, Latur
Taluka and District - Latur | |

VERSUS

Padminbai w/o Rokdoba Sunape Age - 62 years, Occ - Household, R/o Bhatangali, Taluka and District - Latur	RESPONDENT
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Mr. T. M. Venjane h/f Mr. Aninkya Reddy, Advocate for petitioners
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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 26th JULY, 2017

ORAL JUDGMENT :

1. Heard learned advocate for the petitioners.
2. Petitioners purport to take exception to order dated 20th October, 2016 passed by civil judge, junior division, Latur on

Exhibit-149 in Regular Civil Suit No. 447 of 2010, allowing secondary evidence in respect of sale deed, certified copy of which is already placed on record. It further transpires that original sale deed is stated to be in possession of third person, to whom witness summons had been issued, however, yet, copy had not been placed on record.

3. Trial judge, while allowing application Exhibit-149 has observed in paragraph No. 4 of the impugned order, thus-

" 4. Heard both the sides. Perused record of the case. The matter is posted for plaintiffs evidence since last 10 months. No evidence has been led as the plaintiff. She has applied for the summons to the witness for production of sale deed. The record shows that steps have taken by the plaintiff to secure production of sale deed no. 108/2000. On 08/02/2016 as per order below Exh.42, production of summons was issued. The report of Bailiff Exh. 48 shows that witness Shaikh refused to accept summons. It is argued on behalf of defendants that, permission to lead secondary evidence cannot be granted as witnesses has not refused to produce sale deed. In this regard it can be safely said that refusal of witness accept summon itself amounts to refusal to produce the document. Therefore there is no force in the argument that the witness never refused to produce document. "

4. Section 65 (c) of the Indian Evidence Act, reads thus -

" 65. Cases in which secondary evidence relating to

documents may given - Secondary evidence may be given of the existence, condition or contents of a document in the following cases:-

(a)

(b)

(c) *when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time; "*

5. Having regard to aforesaid and in view of section 65 (c) of the Indian Evidence Act, 1872, it does not appear that trial judge has committed any error in passing impugned order.

6. Writ petition, as such, is devoid of any substance and the same stands dismissed.

[SUNIL P. DESHMUKH, J.]