

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5601 OF 2017

Habib Alvi S/o Habib Amar

Petitioner

Versus

Sharifa Salamabee w/o Habib Abdullah

Respondent

Mr.C.R. Thorat advocate for the petitioner
Mr.D.P. Bakshi advocate for Respondent

CORAM : **V.K. JADHAV, J**

(Date: January 29th, 2018)

PER COURT :-

- 1 Heard with the consent of the parties at admission stage.
- 2 The petitioner is aggrieved by the order passed by the 3rd Joint Civil Judge, Junior Division, Paithan, Dist. Aurangabad below Exhibit 45 in R.C.S.No.235/2013 on 25.2.2017, by which permission to lead secondary evidence in respect of partition deed dated 25.3.2009 has been rejected. The Trial Court has rejected the said Application, on the sole ground that notice as contemplated under section 65 of the Indian Evidence Act was not issued to the respondent – plaintiff.
- 3 On perusal of the impugned order passed by the Trial Court

below Exhibit 45, it appears that the petitioner has filed an application Exhibit 45, seeking production of the partition deed dated 25.3.2009. The petitioner defendant has filed said application Exhibit 45, contending therein that he had given share to the plaintiff out of the suit property by way of partition deed dated 25.3.2009. The original is in the possession of the plaintiff and the defendant has filed photo copy on record. The Trial Court by order dated 25.2.2017 rejected the said application Exhibit 45 mainly on the ground that the respondent - plaintiff admits that 60 Are of the land is given to her by the defendant. The Trial Court has observed that the production of the document i.e. partition deed dated 25.3.2009 is not required. In view of the specific admission given by the respondent herein in respect of the partition deed dated 25.3.2009 and about receipt of share to the extent of 60 Are in the landed property, the application Exhibit 45, seeking permission to lead secondary evidence appears to be unwarranted and uncalled for.

4 In view of above, the writ petition is hereby disposed of.

5 No costs.

(V.K. JADHAV, J)