

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

930 WRIT PETITION NO. 7747 OF 2017

DAMYANTI GANESHRAO KHANDAGALE

VERSUS

RAJKANWAR SATYANARAYAN KARWA AND OTHERS

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Advocate for Petitioners : Mr. S. S. Chapalgaonkar

Advocate for Respondent No.1 : Mr. B. R. Sontakke

Advocate for Respondent No.2 : Mr. K. B. Jadhav

Advocate for Respondent Nos. 3 to 5 : Mr. S. B. Ghatol Patil

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CORAM: V. K. JADHAV, J.

DATED: 14th February, 2018.

PER COURT :-

1. Heard.

2. The learned counsel for the petitioner submits that the petitioner has filed an application Exhibit-61 for referring the thumb impression of the petitioner for comparing it to the thumb impression recorded in the register maintained by the registration authority in respect of sale deed Serial No. 2295 dated 18.07.1970 and the Trial Court by impugned order rejected the said application mainly on the ground that the original sale deed which has been challenged itself is not on record and as such the thumb impression mark appearing in the register of the Registry Office cannot be compared with the thumb impression of the plaintiff. The learned counsel submits that subsequent to filing of the writ petition, on 22.01.2016 the petitioner has filed an

application Exhibit-69 seeking direction to original defendant no.1 to produce the original sale deed before the court and the learned judge of the Trial Court by order dated 22.01.2016 allowed the said application and directed to issue summons to defendant no.1 to produce the original sale deed. The learned counsel submits that, if the original sale deed is produced before the court, then the petitioner may be permitted to file an application under Order XXVI Rule 10(a) of Code of Civil Procedure for referring the said document for comparing the sample thumb impression of the petitioner with the original sale deed.

3. In view of the above, the petitioner seeks leave to withdraw this writ petition with liberty to file an application afresh before the Trial Court after the original sale deed is produced on record under Order-XXVI Rule 10(a) of the Code of Civil Procedure.

4. In view of the above, leave granted. Writ petition is disposed of as withdrawn with the liberty, as aforesaid. The petitioner is permitted to file an application under Order XXVI Rule 10(a) of the Code of Civil Procedure before the Trial Court in the event if the original sale deed is produced before the Trial court, and the Trial Court may consider the said application on its own merits, after giving an opportunity of being heard to the contesting defendants.

5. Writ petition is accordingly disposed of. No costs.

(V. K. JADHAV, J.)

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