

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4026 OF 2018

Sayaji Mansing Kadam	.. Petitioner
Vs.	
Shankar Ramchandra Darekar & Ors.	.. Respondents

Mr.P.B. Gujar for the petitioner.
Mr.Vijay Killedar for the respondent nos.1 to 3.

CORAM : R.D. DHANUKA, J.
DATE : 9th October 2018

P.C.:

. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 28th September 2011 passed by the Joint Civil Judge, Senior Division, Satara below Exhibit-130 rejecting the application filed by the petitioner (original plaintiff) inter alia praying for seeking permission to adduce secondary evidence under Section 65 of the Indian Evidence Act, 1872.

2. I have heard the learned counsel for the parties and have perused the application made by the petitioner inter alia praying for seeking permission to adduce secondary evidence.

3. On perusal of the application filed by the petitioner, I am satisfied that the case for adducing the secondary evidence is made out for the reasons recorded therein. Learned trial Judge has however brushed aside the reasons recorded in the application below Exhibit-120 filed by the petitioner and has wrongly rejected the said application. The

petitioner has satisfied the condition under Section 65 of the Indian Evidence Act, 1872.

4. I therefore pass the following order : -

- (i) The impugned order dated 28th September 2011 passed by the learned trial Judge below Exhibit-130 is quashed and set aside.
- (ii) The application below Exhibit-130 filed by the petitioner is allowed.
- (iii) Both the parties are directed to co-operate with each other and with the learned trial Judge in expeditious disposal of the suit and shall not seek any unnecessary adjournment.
- (iv) In view of the fact that one of the parties is senior citizen who is 75 years old, hearing of the suit is expedited.
- (v) Learned trial Judge shall make an endeavour to dispose of the suit within one year from the date of commencement of hearing.
- (vi) Writ petition is allowed in aforesaid terms.
- (vii) There shall be no order as to costs.

R.D. DHANUKA, J.