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

WRIT PETITION NO.3612 OF 2016

Shantaram Damodar Patil & Ors. ..Petitioners.

V/s.

Suresh Ganu Chougula & Ors. ..Respondents.

Mr.Sandeep Patil i/b. Chintan Y. Shah for the petitioners.

Mr.Anil D'souza for respondent Nos.1 to 3.

Ms.Kavita Solunke, AGP for respondent Nos.4 & 5.

Srikrishna
Ananth
Sharma

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Srikrishna Ananth Sharma
Date: 2018.07.31 11:12:17
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CORAM: NITIN W.SAMBRE, J.

DATE : JULY 27, 2018

P.C.:-

In a suit for declaration and injunction, after the plaintiffs' prayer for leading secondary evidence under section 63 Chapter V of The Evidence Act, 1872 was allowed, an application for recalling the witness based on above is rejected. As such, this petition.

2. After having heard the respective counsel, what is required to be appreciated is, once the plaintiffs are permitted to lead secondary evidence, the fact remains that he has every right to recall the witness so as to take the said order to its logical end.

In the present case, what is noticed is, on one hand the Court has permitted the plaintiffs to lead secondary evidence, however, on the other hand, rejected the prayer for recalling of witness. The fact remains that the order permitting leading of secondary evidence was never challenged by the defendants.

3. That being so, the order impugned, in my opinion, is not sustainable and is hereby quashed and set aside and the application Exhibit-51 stands allowed subject to the payment of costs of Rs.15,000/- to be deposited before the trial Court within a period of six weeks from today, to which the respondents will be entitled to withdraw.

4. Needless to observe that such part of evidence which the plaintiffs intend to adduce, which is prejudice to the interest of the defendants must be appreciated at appropriate stage and if required may be disallowed considering the provisions of law viz. filling up lacuna etc.

5. The petition is disposed of in terms of above.

(NITIN W.SAMBRE, J.)