

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

WRIT PETITION NO.7252 OF 2015

Vishwanath @ Vishwasrao Shankarrao
Savant & Ors.

.. Petitioners

Vs.

Shivram Sitaram Sakate & Ors.

.. Respondents

Mr.S.S. Koregave for the petitioners.

None for the respondents.

CORAM : R.D. DHANUKA, J.

DATE : 1st October 2018

P.C.:

. Learned counsel for the petitioners states that all the respondents have been served through public notice in daily Marathi newspaper. None appears for the respondents though the matter was called out.

2. By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 27th March 2015 passed by the learned trial Judge below Exhibit-173 and also seek to challenge the order dated 20th January 2014 passed by the learned trial Judge thereby rejecting the application for review of the order passed below Exhibit-144.

3. By the impugned order dated 27th March 2015, the learned trial Judge has rejected the application below Exhibit-144 and has refused to review the application below Exhibit-136 inter alia praying for permission to lead secondary evidence.

4. Learned counsel for the petitioners invited my attention to the order dated 10th September 2018 passed by this Court in the case of ***Sandip Ganpat Kalbhor & Ors. Vs. Dattatraya Namdeo Katre & Ors.*** in Writ Petition No.1909 of 2014. This Court has reported the judgment of this Court in the case of ***Karthik Gangadhar Bhat Vs. Nirmala Namdeo Wagh & Anr., 2017 (6) Bom.C.R. 554*** holding that filing of an application for permission to lead the secondary evidence under Section 65 of the Indian Evidence Act, 1872 is not necessary. In my view, both the orders passed by this Court are contrary to the law laid down by this Court in the cases of ***Sandip Ganpat Kalbhor & Ors. (supra)*** and ***Karthik Gangadhar Bhat (supra)*** and thus deserves to be set aside. The orders passed below Exhibit-136 and Exhibit-144 are accordingly quashed and set aside. The application filed by the petitioners below Exhibit-136 is allowed.

5. The petitioners shall be given an opportunity to lay foundation of secondary evidence. If any foundation is laid during the course of the evidence, the learned trial Judge shall permit the petitioners to lead secondary evidence if the same is in compliance with Section 65 of the Indian Evidence Act, 1872. Writ petition is allowed in aforesaid terms. No order as to costs. The petitioners are directed to convey this order to the respondents as well as the learned trial Judge for record and compliance. Parties as well as the learned trial Judge to act on the authenticated copy of this order.

R.D. DHANUKA, J.