

be permitting Defendant Nos.10 to 12 to lead evidence pertaining to the facts which are not pleaded. It is, in these circumstances, that the application was rejected.

2 Learned advocate appearing on behalf of the Petitioners placed reliance on a decision of another single Judge of this Court in the case of **Parasanbai Dhanraj Jain & Ors. Vs Sunanda Madhukar Jadhav** reported in **2017(6) ALL MR 877** and contended that there is no need for a party to file an application to lead secondary evidence. She submitted that this Court has directed that no judge in the subordinate judiciary to this High Court will insist on any application being filed for leading the secondary evidence under any circumstances whatsoever. She, therefore, submitted that the impugned order ought to be set aside.

3 I am unable to agree with this submission. This application was filed by the Petitioners themselves. It was not as if the Trial Court insisted that this application ought to be filed by the Petitioners. The Trial Court whilst considering this application came to the conclusion that the document for which the Petitioners want to lead secondary evidence, does not find any reference in their Written Statement. This being the case, the Trial Court held that it would

amount to permitting Defendant Nos.10 to 12 (the Petitioners herein) to lead evidence pertaining to the facts which are not pleaded. Looking to the totality of the facts of this case, I do not think that the order passed by the Trial Court suffers from any perversity or is vitiated by any error apparent on the face of the record requiring my interference under Article 227 of the Constitution of India. I find that the Trial Court has correctly appreciated the fact that no evidence could be allowed to be led with reference to this document considering it was neither pleaded nor referred to in the Written Statement.

4 As far as the reliance placed on a decision of this Court in the case of **Parasanbai** (supra) is concerned, I find that the same is wholly misplaced. It is not the case over here that the Trial Court insisting that an application be filed for leading secondary evidence and thereafter proceeded to reject the same. In the facts of this case, the Petitioners themselves voluntarily filed an application for leading secondary evidence. It was not rejected on the ground that it does not comply with the provisions of Section 65 of the Evidence Act, 1872, but on the ground that the document of which the evidence is sought to be led, was neither pleaded in the Written Statement nor referred to therein. In these circumstances, I find that the reliance placed on the aforesaid decision of this Court is wholly misconceived.

5 In view of the foregoing discussion I find no merit in this Writ Petition. It is accordingly dismissed. There shall be no order as to costs.

6 I am informed that by virtue of the ad-interim orders passed from time to time, the trial of the suit has been stayed by this Court. Considering that the suit is of the year 1999, the same is vacated forthwith and the Trial Court is directed to proceed with the suit and decide the same as expeditiously as possible.

(B.P.COLABAWALLA, J.)