

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

WRIT PETITION NO. 13687 OF 2017

Suryanarayan Ramlal Yadav	... Petitioner
Versus	
Radhibai Atmaram Chaudhari and others	... Respondents

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Mr. R. A. Thorat, Senior Advocate a/w Ms. Aditi S. Naikare for Petitioner.

Mr. Jadhav a/w Mr. Mustafa Kachwala i/b M/s. Kachwala Nisar & Co. for Respondent Nos. 2 to 7.

Mr. Ashraf A. Shaikh for Respondent No.23.

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CORAM : MRS. MRIDULA BHATKAR, J.

DATE : 6th JULY, 2018.

P. C.:

1. This petition is directed against the order dated 2nd December, 2016 passed by the learned 9th Joint Civil Judge, Senior Division, Thane below Exhibit-111 in Special Civil Suit No. 123 of 2009, rejecting the application of the plaintiff to lead secondary evidence. Hence, the Petitioner-Plaintiff has approached this Court by filing this Petition.

2. The order of secondary evidence was passed while deciding the preliminary issue, which was framed under Section 9A of the CPC. In view of the ordinance No.XXVIII dated 22nd June, 2018 under Section 9A, all revisional proceedings against Section 9A stand abated. Hence, this Petition also cannot be entertained.

3. Learned Counsel for Respondents has pointed out that the Respondents-Defendants' evidence is recorded in the proceedings tried under Section 9A by the trial Court. The said evidence is saved in view of proviso of sub Section 1 of Section 3 of the said ordinance.

4. Learned Senior Counsel for the Petitioner further submits that as the proceedings under Section 9A will go even before the trial Court, the issue of jurisdiction will be framed under Order 14 and thus, he may be given liberty to file a separate application for leading secondary evidence, if required and that is to be decided independently at the time of hearing of the issues.

5. Both the submissions are accepted and the Petition is disposed of with following order.

:: ORDER ::

- (i) The writ petition is abated.
- (ii) The issue of jurisdiction, if raised by the respondents, it is to be framed under Order 14 by the trial Court.
- (iii) If it is framed, then, the evidence tendered by the respondents can be considered at the time of final hearing of the trial.
- (iv) If such issue is framed, the Plaintiff is allowed to file application to lead secondary evidence before the trial Court and that must be decided independently by the trial Court.

(MRIDULA BHATKAR, J.)