

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

939 WRIT PETITION NO.896 OF 2018

NIRMAL DIGAMBARDAS GUJARATHI AND ANOTHER
VERSUS
SANGITA KIRIT PATEL AND OTHERS

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Advocate for Petitioners : Mr. Kadethankar Ajit B.
Advocate for Respondent No.1 :Mr. M.B. Patni
Advocate for Respondent No.2 :Mr. C.S. Tembhornikar
Advocate for Respondent No.3 :Mr. Y.I. Thole

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CORAM: ROHIT BABAN DEO, J.

Date: JANUARY 8th , 2020

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PER COURT :-

1 The petitioners, who are the original defendants in a suit for partition and separate possession, preferred an application for examining Shri Haribhau Deshmukh as the witness to document dated 8.1.2007 purporting to be an agreement. The application came to be rejected by the order impugned, which *inter-alia* observes that, since the document itself is not admissible in view of the provisions of section 49 of the Indian Registration Act, Court commissioner to examine the witness could not be appointed.

2 The learned counsel for the petitioners fairly states that during pendency of the litigation, the witness who was to be examined, has expired and in that sense, the petition is rendered

infructuous. However, the learned counsel expresses apprehension that there is an observation that the document/s is/are not relevant.

3 Needless to observe, the observations in the order impugned are *prima-facie* observations.

In paragraph No.6 of the order impugned, the learned trial Court has already observed that the admissibility of the documents is kept open. In that view of the matter, it is clarified that the admissibility of the documents which are referred to in the order impugned is kept open for adjudication at an appropriate stage.

4 The petition is disposed of.

5 Needless to record, the interim order passed stands vacated.

(ROHIT BABAN DEO, J)