

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

920 WRIT PETITION NO.6169 OF 2021

TUKARAM GOPALA TONDE
VERSUS
DAGDU KISAN TONDE AND OTHERS

...
Advocate for Petitioner : Mr. S. S. Kulkarni
...

CORAM : AVINASH G. GHAROTE, J.

DATED : 30th JULY, 2021.

...

PER COURT :

1. Heard Mr. Kulkarni, the learned counsel for the petitioner. The challenge is to the order dated 3rd March, 2021, passed by the trial court, whereby the application filed by the petitioner who was the original plaintiff, before the trial court in RCS No. 229 of 2012 for recalling of the witness after the evidence of the plaintiff's side is completed and the matter was fixed for the evidence of the defendants, has been rejected. The contention is that, the relinquishment deed dated 02/04/2004 which was already on record, filed by the defendants, being an improperly stamped document was sent for impounding by an order dated 12/03/2020, and therefore, same could not be proved.

2. It is an admitted position that the entire evidence of the plaintiff's side, was already over, before the order dated 12/03/2020, impounding the release deed was passed. The release deed, admittedly has been

filed by the defendants on record. The plea which is now sought to be raised for recalling the witness, in order to prove the release deed, is clearly not tenable, as the entire evidence of the plaintiff is already over and the learned trial court has found that there was no satisfactory reason for the same.

3. It is material to note that since the document of release, has been filed by the defendants in the suit, it is permissible, in law for the plaintiff to admit the same, and once that happens, the same will have to be exhibited and read in evidence. That being the case, there is no reason whatsoever to turn the clock back by recalling the witness, namely the plaintiff, who was the recipient of the document. In the light of what has been said above, as the above course is available, no prejudice shall be caused, if the impugned order is maintained. In that view of the matter, the petition, is therefore, dismissed. No order as to costs.

(AVINASH G. GHAROTE, J.)

vsm/-