

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

**958. WRIT PETITION NO. 9737 OF 2015**

Samadhan S/o Devram Koli,  
age 65 years occup. agriculture  
R/o Pimpri Akraut Taluka Muktainagar Dist. Jalgaon  
...Petitioner

**VERSUS**

1. Shobhabai Suresh Kale,  
age 43 years occupation household
2. Sanjiv Suresh Kale,  
age 27 years occupation nil
3. Sachin Suresh Kale,  
age 29 years occupation nil
4. Sonibai Suresh Kale,  
age 23 years occupation nil

All R/o Vanjarwadi, Muktainagar (old)  
Tal. Muktainagar Dist. Jalgaon.  
...Respondents

*Mr. V.B. Patil, Advocate for petitioner*  
*Mr. S. S. Thombre, Advocate for all respondents*

**CORAM : N.J. JAMADAR, J.**

**DATE : 2<sup>nd</sup> March, 2021**

**ORAL JUDGMENT:**

1. Rule. Rule made returnable forthwith and heard finally  
with the consent of the parties.

2. Challenge in this petition is to the order dated 6<sup>th</sup> August 2015 whereby the learned Civil Judge (J.D.), Muktainagar, allowed the application preferred by the defendants/respondents herein, for leading secondary evidence of agreement for sale, which was lost in transit to the office of the Collector of Stamp, to whom it was sent for impounding under the provisions of the Maharashtra Stamp Act, 1958.

3. The defendants preferred the application seeking to lead secondary evidence of the agreement to sell on the premise that the original instrument was not forthcoming as it was lost in above circumstances. The learned Trial Court found, as a matter of fact, that the instrument was lost during the course of transmission and the Collector of Stamp has obtained photostat copy from the defendants, which on comparison with the photostat copy of the said agreement (Exh. 92) corresponds with the later.

4. The learned Counsel for the petitioner assailed the impugned order on the count that there is no clarity as to what document was furnished by the defendants to the Collector of Stamp, which eventually came to be impounded. The submission does not merit acceptance for reasons more than one. Firstly, the existence of the original instrument on the record of the Court, when

it was impounded, is incontrovertible. Secondly, the loss of the instrument in transit to the office of the Collector of Stamp can also be not doubted. The Trial Court has taken care to compare the copy of the document which the defendants sought to tender with copy of the instrument, which was already on the record of the Court.

5. It is true that copy compared with the copy of the original cannot be tendered as a secondary evidence. However, in the peculiar facts of the case, the original instrument was, in fact, lost while it was *custodia legis*. In the circumstances, the Trial Court was justified in allowing the defendants to tender the copy of the lost original instrument as a secondary evidence. Thus, there is no substance in the petition.

6. The petition stands dismissed.

7. Interim order stands vacated.

8. Rule discharged.

( N.J. JAMADAR )  
JUDGE