

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

WRIT PETITION NO. 12148 OF 2015

**MOHD. ISMAIL SHAIKH BADRUDDIN AND OTHERS
VERSUS
SHAIKH BADRUDDIN SHAIKH CHAND DIED THROUGH HIS L.RS.
ZUBEDA BEGUM SK. BADURDDIN (DIED) AND OTHERS**

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Advocate for the Petitioners : Mr. A. D. Kasliwal

Advocate for the Respondents : Mr. S. S. Tope

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CORAM : SMT. BHARATI DANGRE, J.

DATE : 24th JANUARY, 2022

PER COURT :

1. Heard the learned counsel for the petitioners and the learned counsel for respondents.

The impugned order was passed below Exhibit-62 in R.C.S. No.1994/2012, being an application filed by the defendants along with a xerox copy of document dated 20-10-2008 under the name and style as “विना मोबदला वाटणीपत्र”. With a plea that xerox copy of the document is obtained from the Talathi, permission is sought to lead secondary evidence in respect of the said document.

This application came to be objected to by the other side denying the very existence of the said document and by pleading that Talathi is a public officer and it cannot be argued by the defendants that

the original document is not received and therefore, in absence of its existence being proved, the ingredients of leading secondary evidence under Section 65 of the Evidence Act are not made out.

This being the precise contest between the parties, the learned Judge in the impugned order, however, rejected the application by recording as under:-

“4. Admittedly document dtd. 20/10/2008 is unsufficiently stamped hence in view of the case law cited supra reception of secondary evidence is barred. Hence the order”

It is different thing to say that a document, since it is not sufficiently stamped, cannot be accepted in the evidence but when the bone of contention between the parties is a document of whose existence is being denied by one side and the other side is seeking its proof being adduced by secondary evidence, instead of advertng to the said question the learned Judge has rejected the application on a strange ground, which is sought to be canvased here.

2. Since it is informed by the parties that the proceeding in the suit are stayed in the wake of the impugned order being under challenge, by quashing and setting aside the impugned order the learned Judge is directed to hear the parties on Exhibit-62 within a period two weeks from today and pass appropriate orders.

Needless to state that since the regular civil suit in which the application Exhibit-62 is filed, is pending since 2012, the learned Judge shall make every endeavour to terminate the proceeding in the suit, within a period of one year from today.

(SMT. BHARATI DANGRE, J.)