

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

WRIT PETITION NO.1805 OF 2022

Sumati Maruti Sawant & Anr.

.. Petitioners

Versus

Jivan Atmaram Bothare

.. Respondent

Mr.K.K. Jadhav a/w Mr.J.K. Jadhav for the petitioners.

CORAM : ROHIT B. DEO, J.

DATED : 6th JUNE 2022

P.C.:-

. The petitioner is the plaintiff in Regular Civil Suit 117 of 2013 instituted for declaration and injunction.

2. In the midst of trial, the defendant preferred an application seeking permission to lead secondary evidence qua alleged document dated 29.5.1995.

3. The defendant contended in the said application that due to lapses of memory and ailments of his father, he is not in a position to locate the original of the said document. This application is allowed by the trial Court and aggrieved the plaintiff is invoking writ and supervisory jurisdiction.

4. Apart from the fact that the jurisdiction of the writ court, or for that the matter in supervisory jurisdiction under Article 227 of the Constitution of India, would be extremely limited, and that even the error of law shall not be vulnerable to interference unless serious miscarriage of justice is demonstrated, in the factual matrix, all that is permitted is tendering of secondary evidence. The concept of tendering cannot be confused with that of either relevancy or admissibility.

5. I do not see any reason to interfere with the order impugned since, it would be for the defendants to establish the conditions envisaged under Section 65(c) of the Indian Evidence Act *inter alia* that the original document was in existence, and the same cannot be located for the reason put forth. It would be further for the trial Court to consider the relevancy and admissibility of the document. These questions will have to be kept open for the trial Court to address at an appropriate stage.

6. Subject to the observations supra, the petition is dismissed. Trial Court is requested to expedite the suit.

ROHIT B. DEO, J.