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

WRIT PETITION NO. 7957 OF 2021

Mr. Ramchandra Pandurang Walke

since deceased

1a. Smt. Chandrakla Ramchandra Walke

and Others

....Petitioners.

V/s

Pursingh Birsingh Bohat

Since deceased through LR

Ramesh Pursingh Bohat

.... Respondent

Mr. Saiprasad Dudhane i/b Manmohan A. Dudhane for the Petitioners.

CORAM: NITIN W. SAMBRE, J.

DATE: AUGUST 01, 2022

P.C.:-

1] Heard.

2] This Petition is by the Petitioners who are Plaintiffs to L.E. Suit No. 142 of 1999. The claim of eviction is based on the plea of the Petitioners/Plaintiffs of service tenancy (gratuitous license). Respondent preferred suit being RAD Suit No.8 of 2001 wherein declaration is granted that he is a tenant of the Petitioners, which declaration is informed to be the subject matter of challenge at the behest of the present Petitioners in independent proceedings. The judgment and decree passed in RAD Suit No.8 of 2001 wherein

declaration was granted is ordered to be exhibited as Exhibit-98 by the Revisional Court i.e. Additional Chief Judge, Small Causes Court at Bombay vide order dated 9/12/2019.

3] Contentions are, decree passed in RAD Suit No.8 of 2001 is ex parte and same is under challenge in independent proceedings. Apart from above, it is claimed that there are written statements through which claim for eviction was resisted in L.E. Suit No.142 of 1999. There is no reference to the aforesaid decree and as such, in the absence of any pleadings, the document ought not to have been accepted and exhibited. Counsel as such would urge that such evidence which is not germane for deciding the issue has been accepted contrary to the legal provisions under the Indian Evidence Act.

4] I have appreciated the aforesaid submissions.

5] Fact remains that document-Exhibit-98 is a public document within the meaning of Section 74 of the Indian Evidence Act and certified copy thereof can be accepted in evidence.

6] That being so, impugned order appears to be in tune with legal provisions and does not call for any interference.

7] As far as merits of the contents of the aforesaid documentary evidence viz. Exhibit-98 is concerned, it is always open for the

Petitioners to canvass on the acceptability of the said evidence for deciding the cause to be considered and dealt with by the Small Causes court. Keeping such option open to the Petitioners, I do not see any reason which warrants interference in the order impugned. Petition as such fails and same stands dismissed.

8] All pending Interim Applications stand disposed of.

(NITIN W. SAMBRE, J.)