

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

WRIT PETITION NO.6933 OF 2021

Shri. Gajanan Dundappa Savardekar ..Petitioner
Versus
Shri. Santosh Sitaram Bhopale and Ors. ..Respondents

Mr. Chetan G. Patil a/w Mandar Bagkar, for the Petitioner.
Mr. Shirish D. Palange, for the Respondent No.1.

CORAM : NITIN W. SAMBRE, J.

DATE : 3rd FEBRUARY, 2022

PC.

1. Heard Mr. Chetan Patil, learned counsel for the petitioner/original defendant No.1.

2. The impugned order in a suit for partition is dated 14th February, 2020 passed below Exh.123 and application moved by the plaintiffs seeking permission to lead secondary evidence under Chapter V, Section 65 of the Evidence Act on the photocopy of deed of partition dated 15th December, 1978 is allowed.

3. The submissions of learned counsel for the petitioner Mr. Chetan Patil are, the Court below has taken recourse to the provisions of Section 73 of the Evidence Act so as to verify and compare thumb impression which in any case is not permissible in law. So as to prove the document, comparison of it is not necessary

primarily when the document is executed inter se between the parties. Apart from above, drawing support from the judgment of the Apex Court in the matter of ***H. Siddiqui Vs. A. Ramalingam*** reported in **(2011) 4 SCC 240** particularly in paragraphs 12, 13 and 14, he would urge that unless the contents of the document are proved, same cannot be admitted in evidence. The parameters which need to be satisfied in the matter of invoking Section 65 of the Evidence Act are not satisfied by the respondents/plaintiffs as could be noticed from the contents of the application Exh.123. He would claim that the very requirement of the paragraph 7 of the aforesaid judgment in the matter of ***Ashok Dulichand Vs. Madhavlal Dube and Anr.*** reported in **(1975) SCC 664** are not satisfied with. That being so, the impugned order is not sustainable.

4. Learned counsel for the respondents, Mr. Shirish Palange supports the impugned order. According to him, order impugned dated 14th February, 2020 is passed duly in accordance with law and that being so, the present petition is liable to be rejected.

5. I have considered the aforesaid submissions.

6. The respondents/plaintiffs moved application Exh.123 in a suit for partition for permission to lead secondary evidence on the document which is alleged to be photocopy of memorandum of partition dated 15th December, 1978. In a partition suit, status of the parties is that of co-plaintiffs and the property is brought in

common hotchpotch so that the parties claim assert their claims.

7. In the aforesaid background, the Court below has noticed that already foundation is laid by the respondents/plaintiffs in the matter of leading secondary evidence to which the petitioner/defendant is not taken by surprise. Whether the document dated 15th December, 1978 is admissible in evidence and the contents thereof are proved or not can be looked into at the appropriate stage of the proceedings. That being so, the support drawn from both these judgments of the Apex Court are of hardly any significance at this stage. Keeping right of the petitioner open to agitate on the merit of the proof of the document, in my opinion, no case for interference in the extraordinary jurisdiction of this Court is made out.

8. As such, petition stands dismissed.

[NITIN W. SAMBRE, J.]