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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO. 6548 OF 2017**

NILKANTH RAJARAM RASKAR AND ORS PETITIONERS

V/s.

MRS. PRATIMA PRASANNA RASKAR RESPONDENTS
AND ORS

Mr. R. V. Govilkar a/w a/w Ms. Shaba N. Khan Advocate for the
Petitioners

Mr. Shekhar Jagtap a/w Mr. Ranjeet Nimbalkar a/w Ms. Sairuchita
Chaudhary a/w Rhea Francis i/b J. S. Shekhar and Co. for
Respondent nos. 1 & 2

Mr. K. P. Shah for Respondent no. 3

Petitioner No. 1 present in person

CORAM : NITIN W. SAMBRE, J.

DATE: FEBRUARY 26, 2022.

P.C.:

1) This Petition is by Plaintiff to R.C.S. No. 143/2012 questioning the order passed below Exh. 185 wherein Application moved under Chapter 5 of the Indian Evidence Act seeking permission to lead secondary evidence is rejected.

2) Heard Shri. Govilkar, learned counsel for the Petitioner, Mr. Jagtap and Mr. Shah for Respondents.

3) I have perused the pleadings in the Application Exh. 185. The very requirement for permission to lead secondary evidence is

satisfied as the Petitioner has laid the foundation for the same by relying on the pleadings and fact of registration of C.R. No. 224/2016. This Court, for deciding the Application need not to appreciate whether the allegation which has lead to registration of C.R. No. 224/2016 is correct or not, however, it is satisfied from the reading of the Application Exh. 185 that the Petitioner has laid the foundation for permission to lead secondary evidence and that being so, order impugned passed below Exh. 185 on 03/04/2017 is not sustainable.

4) As such, order passed below Exh. 185 on 03/04/2017 is quashed and set aside. Petitioner is permitted to lead secondary evidence as prayed vide Exh. 185.

5) The admissibility of such evidence, if so lead in the form of secondary evidence by the Petitioner will be an independent issue which of course the Trial Court will to dwell upon in accordance with law. That being so, Petition stands disposed of in the above terms.

6) Parties are at liberty to move before the Trial Court for expeditious disposal of the Suit.

[NITIN W. SAMBRE, J.]