

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

WRIT PETITION NO. 6805 OF 2018

Baba Mahajan Pagalwad and others .. Petitioners

Versus

Gangadhar Mahadji Gurlewad .. Respondent

Shri Hamzakhan I. Pathan, Advocate for the Petitioners.
Shri S. S. Gangakhedkar, Advocate for the Respondent.

CORAM : SHARMILA U. DESHMUKH, J.
DATE : 28TH FEBRUARY, 2023.

FINAL ORDER :

1. The challenge in the petition is to the order dated 24th April, 2018 passed in R.C.S. No. 46 of 2016 allowing the respondent's/plaintiff's application for leading secondary evidence of a panchnama prepared by talathi on 03rd August, 1990.

2. Heard.

3. Learned counsel appearing for the petitioners submits that the panchnama in respect of which the secondary evidence is sought to be led is not a certified copy of any document, nor photo copy of the certified document. He would further submit that there is also discrepancy as regards the signature on the panchnama.

4. Per contra, learned counsel for the respondent submits that it is now settled position by virtue of the decision of this Court in the case of **Parasanbai Dhanraj Jain and others Vs. Sunanda Madhukar Jadhav** reported in **2018 (1) Mh. L. J. 788**, that there is no requirement of filing an application for leading of secondary evidence.

5. This Court in the case of **Parasanbai Dhanraj Jain and others Vs. Sunanda Madhukar Jadhav** (supra) has observed that either secondary evidence is led or it is not led and no permission of a Court is required to lead evidence of any kind. There is absolutely no question of an application, whether styled as an interim application or a 'MARJI' application, for 'permission' to lead secondary evidence. The Court cannot refuse that permission, and it cannot insist on an application for any such permission

6. Considering the decision in the case of **Parasanbai Dhanraj Jain and others Vs. Sunanda Madhukar Jadhav** (supra) which lays down that there is no requirement of filing of application for the purpose of leading secondary evidence, the objection of the petitioners to the grant of application itself is misconceived. Another aspect which is relevant for the present purpose is that the Trial Court has held that veracity/correctness of the document in question will be decided at the time of evidence and same cannot be considered at this stage. Observing such, Trial

Court has permitted the plaintiff to lead secondary evidence.

7. In my opinion, evidence cannot be shut out on the objection as regards the admissibility or relevancy of the evidence. Keeping open the objections of the petitioners as regards relevancy and admissibility of the document in question, the writ petition is disposed of. No costs.

[SHARMILA U. DESHMUKH, J.]

bsb/Feb. 23