

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.12996 OF 2022**

KONDOPANT VINAYAKRAO GULWELKAR
VERSUS
THE STATE OF MAHARASHTRA THROUGH DISTRICT
COLLECTOR AND OTHERS

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Mr. Sudhir K. Chavan, Advocate for the Petitioner.
Mr. S. N. Morampalle, AGP for Respondents-State.

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**CORAM : SHARMILA U. DESHMUKH, J.
DATED : 07th FEBRUARY, 2023.**

PER COURT:-

1. Heard.
2. By this petition, petitioner challenges the order dated 20.09.2022 passed below Exhibit-115 in special Civil Suit No.9/2017, whereby the Trial Court rejected the application of the petitioner seeking permission to lead secondary evidence.
3. Petitioner- original plaintiff, filed Special Civil Suit No.9/2017 for cancellation of the sale deed and declaration and injunction. It is the case of the petitioner in the plaint that the agreement for sale was in respect of 2 acres of land and by fraud respondent no.3 got executed a sale deed for 1H.
4. Learned counsel for the petitioner submits that after evidence was led, it came to the notice of the petitioner that the agreement of sale has not been produced in evidence and as the original document was not in the possession of the petitioner, an application for leading secondary evidence came to be filed.

5. The Trial Court has rejected the application by observing that the application is bereft of any details, as it merely states that the petitioner is not in possession of the original document. The Trial Court has taken into consideration the decision of this Court in case of ***Parsanbai Dhanraj Jain & Ors. Vs. Sunanda Madhukar Jadhav, reported in All MR 877 2017 (6).***

6. The application is admittedly filed after the evidence of the petitioner has been closed and the defendant's witnesses have stepped into the box and the stage is for the cross-examination of the defendant's witnesses. In such a situation, the application filed for leading secondary evidence is totally misconceived in as much as the application ought to have been filed for leading further evidence by giving necessary details to enable the Trial Court to apply its mind and decide the said application.

7. As far as the reliance upon the decision of this Court in case of ***Parsanbai Dhanraj Jain & Ors.*** (supra) is concerned, the decision is inapplicable in the facts of the present case where the petitioner's witness has not stepped in the witness box and the petitioner has already closed his evidence. In the present case the petitioner seeks to lead additional evidence whether by way of primary evidence or secondary evidence and for that purpose appropriate application is required to be filed, which has not been done in the present case.

8. Considering the above, there is no infirmity in the order of the Trial Court dated 20.09.2022, as appropriate

application has not been filed and as such, there is no merit in the petition.

9. Writ Petition is accordingly dismissed.

10. Needless to state that, the petitioner is at liberty to file appropriate application before the Trial Court, which will be considered by the Trial Court on its own merits and in accordance with law.

(SHARMILA U. DESHMUKH)
JUDGE