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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12374 OF 2022**

Vasant Ganpati Khandekar & Ors. ... Petitioners
vs.
Ashok Janardhan Kalantre ... Respondent

Mr. Sandeep S. Koregave for the Petitioners.

Mr. S. A. Rajeshirke for the Respondent.

CORAM : SANDEEP V. MARNE, J.

DATED : 21 FEBRUARY, 2023

P.C. :-

1. By this Petition the Petitioners challenge order dated May 5, 2022 passed by the 5th Jt. Civil Judge Junior Division, Kolhapur rejecting the Petitioners' application at Exh.146 for taking on record and marking as Exhibits the Original Sale Deeds filed along with the application. The application is rejected by the Trial court on the ground that the Plaintiffs/Petitioners have failed to examine the executors of the documents as witness nor had made any attempt to prove the said documents.

2. The learned counsel appearing for the Petitioners submit that photocopies of the Sale Deeds were already placed on

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record before the Trial Court. Inadvertently the Original Sale Deeds were not filed when the Plaintiffs' evidence was led. He would submit that taking the Sale Deed on record and exhibiting them would only enable the Trial Court to determine the real question of controversy between the parties. He would place reliance on the judgment of the Apex Court in ***K.K. Velusamy vs. N. Palanisamy***¹ and order of the Single Judge of this Court in ***Kumar Balu Nikam vs. Namdev Sadashiv Nikam***².

3. Learned counsel appearing for the Respondent opposes the Petition and supports the order passed by the Trial court. He further submits that Defendant's arguments in the Suit are already concluded and filing of the present Petition by the Petitioner is unnecessarily delaying the final decision of the suit.

4. After having heard the learned counsels for the parties, it is clear that the application filed by the Plaintiffs/Petitioners at Exh. 146 did not contain any prayer for examination of authors of the documents that are sought to be produced. In the application, request was made to read the Sale Deeds in

¹ (2011) 11 SCC 275

² Writ Petition No. 1898 of 2016

evidence. Without proof of such sale deeds, by leading evidence, they cannot be marked in evidence. The Trial Court in my opinion has rightly rejected the plaintiffs' application.

5. Reliance of the learned counsel for the petitioners on the judgment in *K.K. Velusamy (supra)* is of little assistance to the case of the Petitioner, in that judgment itself envisages reopening of evidence and/or recalling of witness. Plaintiffs' application did not contain any prayer for reopening of evidence or for recalling of witness. Further reliance of the learned counsel for the Petitioner on the order of this Court in *Kumar Balu Nikam (supra)* is also misplaced. The facts in that case are entirely different and the judgment has no application to the present case.

6. The Trial court has not committed any error in rejecting the Plaintiffs/Petitioners' application. Writ Petition is devoid of merits. It is dismissed. No orders as to costs.

(SANDEEP V. MARNE, J.)