

VRJ

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

WRIT PETITION NO.6719 OF 2013

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Narendra Padmakar Yewlekar & Anr. ... Petitioners

V/s.

Chandrakant uddhav Niphadkar ... Respondent

**WITH
CIVIL APPLICATION NO.2097 OF 2019
IN
WRIT PETITION NO.6719 OF 2013**

Narendra Padmakar Yevlekar & Anr. ... Applicants

V/s.

Chandrakant Uddhav Niphadkar Since
Deceased Through Legal Heirs & Ors. ... Respondents

**WITH
CIVIL APPLICATION NO.2632 OF 2013
IN
WRIT PETITION NO.6719 OF 2013**

Narendra Padmakar Yewlekar & Anr. ... Applicants

V/s.

Chandrakant Uddhav Niphadkar ... Respondent

Mr. Abhijit A. Joshi for the petitioner.

Mr. Kayval P. Shah for the respondent.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 7, 2023

P.C.:

1. Mr. Shah states that he has instructions to appear on behalf of heirs and legal representatives of sole respondent. Statement is accepted.
2. By this writ petition under Article 227 of the Constitution of India, the defendants are challenging order passed by the Trial Court permitting the plaintiff to lead secondary evidence as regards the documents filed along Exhibit-49. The Trial Court permitted the plaintiffs to lead evidence based on the reasoning that the Court in 2010 permitted the plaintiffs to lead secondary evidence as regards certified copies of mortgage deed, and therefore, in the interest of justice, thought it fit to the plaintiffs to file affidavit of evidence to prove the documents.
3. The objection of the petitioners is basic. According to them, without pleadings such evidence cannot be looked into evidence. The objection raised can be dealt with by the Trial Court at the time of final hearing of the suit in view of judgment of Full Bench of this Court in **Hemendra Rasiklal Ghia vs. Subodh Mody** reported in 2008 (5) CTC 577.
4. It is well settled principle of law that no amount of evidence can substitute pleadings. If that be so, such objection has to be adjudicated by the Trial Court despite parties are permitted to lead evidence.
5. The Trial Court is, therefore, directed to adjudicate on the objection of the defendants that the documents produced along with Exhibit-49 cannot be considered as the evidence in absence

pleadings at the timing of final hearing of the suit.

6. With this clarification, civil writ petition stands disposed of.
No costs.

7. In view of disposal of the civil writ petition, civil applications do not survive and the same stand disposed of.

(AMIT BORKAR, J.)