

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

WRIT PETITION NO.1288 OF 2017

Bhupal Anna Magdum

... Petitioner

Versus

Chidambar Vishwanath Magdum

... Respondent.

...

Mr. V. B. Rajure, for Petitioner.

Mr. Manoj A. Patil, for Respondent.

...

CORAM : SANDEEP V. MARNE, J.

DATE : 10 OCTOBER 2023.

P. C.:

The challenge in the present petition is to the order dated 05 August 2015 passed by Civil Judge Senior Division, Ichalkaranji on Application at Exh.144 filed by Plaintiff seeking permission to grant permission to lead secondary evidence of possession Panchanama dated 25 March 1990.

2. I have heard Mr. Rajue, the learned counsel appearing for Petitioner and Mr. Patil, the learned counsel appearing for Respondent.

3. The secondary evidence sought to be led by the Plaintiff is in respect of possession Panchnama dated 25 May 1990 prepared in the execution proceedings. The document in question forms part of Court

record. Perusal of the order of Trial Court would show that the Trial Court has summoned the records relating to execution proceeding and has satisfied itself that the possession of the suit property was sought to be obtained in the execution proceedings. The Court has accordingly recorded finding about existence of the original document. The Court has further recorded finding that the original records are destroyed while destroying file C and D.

4. Therefore I do not find any error in the order passed by the Trial Court. One thing must be clarified that perusal of the order passed by Trial Court would indicate that findings are recorded to the effect that possession of the suit property was indeed handed over to the Plaintiff. This is something which needs to be established by the parties. The application was only for the purpose of seeking permission seeking to lead secondary evidence in respect of possession Panchanam. While deciding that Application, the Trial Court could not have recorded findings with regard to factum of possession. While rejecting the present petition, it is clarified that findings recorded by the Trial Court in its order dated 05 August 2015 regarding handing over possession of property in favour of the Petitioner shall not be treated as final or binding and the Trial Court shall not be influenced by those findings while deciding the suit finally. The Petition is accordingly rejected.

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(SANDEEP V. MARNE, J.)