

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

907 CIVIL APPLICATION NO. 6640 OF 2019
IN SA/473/1995
WITH
CIVIL APPLICATION NO. 10558 OF 2023
IN SA/473/1995
WITH
SECOND APPEAL NO. 473 OF 1995

RAOSAHEB BHAUSAHEB GHODKE DIED THROUGH LRS RANJANABAI
RAOSAHEB GHODKE AND OTHERS
VERSUS
YASIODABAI GANESH KULKARNI AND OTHERS

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Mr. N. K. Kakade, Advocate for Applicants

Mr. A. A. More, Advocate for Respondent Nos. 1 to 5.

CORAM : Y. G. KHOBRADE, J.
DATE : 12th April, 2024

ORDER:

1. Heard the learned counsel for the applicants/appellants and the learned counsel for the non-applicants/respondents at length.
2. By Civil Application No. 6640 of 2019, the applicants, who are original Plaintiffs in RCS No.57 of 1981, have prayed for permission to lead secondary evidence to prove the registered agreement of sale dated 27.03.1978 executed before the Sub Registrar, Ashti, Dist Beed by the present Respondent in favour of the original Plaintiff - namely Raosaheb Ghodke. The learned counsel for the applicants submits that the applicants/plaintiffs already filed certified copy of the original agreement before the trial court but inadvertently, remained to be

proved because the applicants have not led secondary evidence. So also, their counsel has not made any application to that extent and, therefore, the said document could not be exhibited, though it is a registered document.

3. The applicants themselves stated that though they produced the registered agreement of sale on record, but they could not led evidence, so also their counsel did not make any effort to get the said document exhibited. Therefore, at the Second Appeal stage, parties cannot be permitted to cure the defect. The Civil Procedure Code does not provide to lead secondary evidence in the second appeal. Therefore, at the stage of second appeal, the said permission cannot be granted.

4. Civil Application No. 6640 of 2019 is accordingly disposed off.

5. In view of the above, the learned counsel for the applicant seeks permission to withdraw Civil Application No. 10558 of 2023. Leave granted. The civil is disposed off as withdrawn.

6. Put up the second appear for final hearing as per its turn.

(Y. G. KHOBRAGADE, J.)

JPChavan