

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.958 OF 2024

Sherali Bandeali Jaffer Khoja and Anr. .. Petitioners
Versus
Mahin Rohington Irani (Devlaliwala) .. Respondent

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• Mr. Piyush Uday Raje, Advocate for Petitioners.
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CORAM : MILIND N. JADHAV, J.

DATE : JULY 18, 2024

P.C.:

- 1.** Mentioned. Not on Board. Taken on Board.
- 2.** Heard Mr. Raje, learned Advocate for Petitioners.
- 3.** Perused the praecipe dated 18.07.2024 and the Writ Petition.
- 4.** The present Writ Petition impugns order dated 01.11.2023 passed below Exhibit-99 by learned Trial Court in Special Civil Suit No.235 of 2014 which is appended at page No.55 of the Writ Petition.
- 5.** Special Civil Suit is filed in the year 2014 by the Plaintiffs whereas application below Exhibit-99 is made by Plaintiffs for the first time in the year 2023 seeking to exhibit the certified copy of registered sale deed dated 01.10.1942. Premise of the Application is on the basis of earlier application of the Plaintiffs having been allowed by learned Trial Court below Exhibit-86. The learned Trial Court while

considering the above ground in paragraph No.3 has noted that permission to lead secondary evidence though was granted but it cannot *ipso facto* be sufficient to exhibit secondary evidence in respect of a document which cannot be directly read in evidence.

6. Admittedly, the subject document i.e. sale deed dated 01.10.1942 or nomenclatured as sale deed dated 07.10.1942 finds no mention in the suit plaint nor any of the deposition of the Plaintiff and therefore, learned Trial Court has returned an appropriate finding as stated in paragraph No.4 of the order dated 01.11.2023 with which no fault can be found by the Court. The said order is a cogent order and passed in accordance with the law and provisions of the Indian Evidence Act, 1872 and the Code of Civil Procedure, 1908.

7. In that view of the matter, I do not wish to interfere with the impugned order dated 01.11.2023. However, at request of Mr. Raje, Writ Petition be listed on **25th July, 2024**. To be listed under the caption 'For Passing Orders'.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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