



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition (WP) No. 4858 of 2021

Vijay S/o Vijay Akare and others

Versus

Ashok S/o Shrawan Wanjari (Dead) through legal representatives

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri V.D.Muley, Advocate for the petitioners.

Mrs. N.S.Gajbhiye-Wasnik, Advocate for the sole-
respondent.

CORAM : ANIL S. KILOR, J.

DATED : 7th FEBRUARY, 2024.

Heard.

2. This writ petition takes exception to the order dated 20th September, 2021 passed on Exhibit 103 for permission to lead secondary evidence in respect of two documents namely Will Deed dated 1st January, 1974 and Exchange Deed dated 31st December, 1966, whereby the learned Civil Judge, Senior Division (Link Court), Bhandara allowed the application and permitted the plaintiff to lead secondary evidence under Section 65 of the Indian Evidence Act, 1872.

3. The plaintiff sought permission to lead secondary evidence on the ground that original copy of the Will Deed was given to the Talathi at the time of carrying out mutation entries and not taken back. However, when the original copy was demanded from the Talathi, it was not returned back by the Talathi on the ground that the same has been destroyed. Accordingly, the permission was sought under Section 65-C of the Indian Evidence Act to lead secondary evidence.

4. The petitioners objected to the said application by filing reply and after considering the rival contentions, the learned trial Court allowed the said application.

5. Shri Muley, learned counsel for the petitioners submits that Exchange Deed is not a registered one and therefore, it cannot be produced for evidence and he further submits that unless the Talathi is to be examined to prove that the original Will Deed was destroyed, permission to lead secondary evidence cannot be granted.

6. However, after going through the reply filed by the defendant nos. 8 to 12, it is evident that, there is no dispute raised by the petitioners to the letter issued

by the Talathi stating that the copy of the Will Deed was destroyed.

7. In absence of such specific denial, the permission granted by the learned trial Court to lead secondary evidence as regards the Will Deed cannot be faulted.

8. As far as Exchange deed is concerned, the petitioners are at liberty to raise such objection on production of such document while leading the secondary evidence. Whereupon, the Court may consider the objection whether such document requires compulsory registration or not.

9. In that view of the matter, I do not want to interfere with the impugned order passed by the trial Court. Accordingly, the writ petition is dismissed.

10. Needless to mention here that I have not dealt with any issue relating to whether the documents namely Exchange Deed or the Will Deed can be exhibited or cannot be exhibited, it is kept open.

11. The writ petition is disposed of.

[ANIL S. KILOR, J.]