



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

WRIT PETITION NO. 1730 OF 2023

Shri. Shankar s/o Vitthalrao Patil,
Age : 72 years, Occ. Agriculture,
R/o. Manohar Talkies Galli/Lane,
Mukhed, Tq. Mukhed, District Nanded.

...Petitioner
[Ori. Plaintiff]

Versus

1] Shri. Hanmant s/o Maneji Wadje (Patil),
Age : 62 years, Occ : Agriculture and Professor,
R/o. Walmiknagar, Mukhed, Tq. Mukhed,
District Nanded.

Orig. Defendant No. 1

2] Mr. Mohamad Khan s/o Mastan Khan Pathan,
Age : 60 years, Occu : Agriculture and Service,
R/o. Manohar Talkies Galli/Lane,
Mukhed, Tq. Mukhed, District Nanded.

Orig. Defendant No. 2

...Respondents

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Mr. A. A. Mukhedkar – Advocate for the Petitioner
Mr. U. B. Bilolikar – Advocate for Respondent Nos. 1 and 2
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CORAM : NEERAJ P DHOTE, J.

**RESERVED ON : 26TH NOVEMBER, 2025
PRONOUNCED ON : 12TH DECEMBER, 2025**

FINAL ORDER : -

1. This Writ Petition under Article 227 of the Constitution of India is directed against the order dated 09.02.2022 passed below Exh. 65 and order dated 07.03.2022 passed below Exh. 67 in Regular Civil

Suit [RCS] No. 146/2015, permitting the defendants to lead secondary evidence and issuing witness summons to the Sub-Registrar for giving evidence in respect of the Sale-Deeds.

2. The Petitioner is the Original Plaintiff and the Respondents are the Original Defendants. In the above-referred Suit, which is for recovery of possession instituted before the 2nd Jt. Civil Judge Junior Division, Mukhed, Dist. Nanded, the Defendants filed their written statement. The Defendants filed the Application below Exh. 65 for exhibiting the certified copies of the Sale-Deeds. The Plaintiff filed his say stating that, the documents produced on record are not the public documents and hence they cannot be directly exhibited and the Application be rejected. By the impugned order, the learned Trial Court allowed the said Application. Thereafter, on Exh. 67 filed by the Defendants for issuance of summons to the Sub-Registrar, the learned Trial Court passed the order that, no say was filed, and hence, granted the same.

3. It is submitted by the learned Advocate for the Petitioner that, the foundational facts for leading the secondary evidence were not pleaded in the Application. Even in the Written Statement, there are no foundational facts in respect of the Sale-Deeds. Therefore, the impugned orders are liable to be set aside. He relied on the judgment in *Jagmail*

Singh and Another Versus Karamjit Singh and Others, 2020 AIR (SC) 2319, in support of his contention.

4. It is submitted by the learned Advocate for the Respondents that, the foundational facts in support of the Application below Exh. 65 for leading secondary evidence were pleaded in the Written Statement. Even for leading secondary evidence, the Application is not required. The learned Trial Court has rightly passed the impugned orders and no interference is called for. In support of his submissions, he relied on the judgment in *Shaikh Aftab Ahmed and Ors. Vs. Bhimrao and Ors.*, MANU/MH/2743/2021.

5. The relevant provision around which the controversy revolves is Chapter V of the Indian Evidence Act, 1872 [hereinafter referred to as 'the said Act'], which is in respect of documentary evidence. Section 61 of the said Act provides that the contents of documents may be proved either by primary or by secondary evidence. Section 63 of the said Act defines as to what is the secondary evidence and what it includes. Section 65 of the said Act provides for the cases in which secondary evidence relating to documents may be given.

6. In the above-referred judgments relied on by the parties, the legal position in respect of the secondary evidence has been

reiterated. It is observed therein that, for secondary evidence to be admitted, the foundational facts have to be given/pleaded showing the reason as to why the original evidence has not been furnished. The party may furnish secondary evidence, and filing of an Application seeking permission to lead secondary evidence would not be mandatory, however, an Application for leading secondary evidence by a party is not precluded.

7. Coming to the case at hand, in the Application below Exh. 65, it was stated by the Defendants that, they have placed on record the copies of the Sale-Deeds certified by the Sub-Registrar, Mukhed, and, therefore, they be exhibited. From the impugned order, it is seen that the Defendants were not parties to the said Sale-Deeds, which were registered with the concerned office of the Sub-Registrar. The learned Trial Court observed that though the Sale-Deed is a private document, the record of the Sale-Deed kept in the office of the Sub-Registrar is a public record of that private document, and hence it falls within the category of public document, therefore, to prove such document, certified copy of the Sale-Deeds is permissible and, thus, issued witness summons on the Application below Exh. 67, to the Sub-Registrar for giving evidence in respect of the Sale-Deeds, certified copies of which were already placed on record by the Defendants. Considering these aspects of the matter and examining the impugned orders in the light of

the legal position as given in the above-referred judgments, no interference is called for in the impugned orders. It is needless to state that the Plaintiff [Petitioner] would be at liberty to cross-examine the witness, who is summoned by the learned Trial Court for giving evidence in respect of the subject Sale-Deeds. Hence, the following order:

ORDER

[i] The Writ Petition stands dismissed.

[NEERAJ P. DHOTE]
JUDGE

SG Punde