



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

19 WRIT PETITION NO. 7084 OF 2025

RAMRAO GOPALA KALAM AND OTHERS

VERSUS

BHIMRAO SHIVRAM KALAM AND ANOTHER

...

Mr. Pravin N Kalani, Advocate for the Petitioner

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CORAM : S. G. CHAPALGAONKAR, J.

DATE : 16.06.2025

PER COURT :-

. Heard Mr. Kalani, learned Advocate appearing for petitioners.

2. Petitioners are defendants in Regular Civil Suit No.48 of 2011 pending before the learned Civil Judge, Junior Division at Sillod. Respondent No.1 instituted suit seeking decree of partition and separate possession in respect of suit properties. It is contention of petitioners-defendants that there was already partition between the parties and plaintiff has given consent for such partition. Accordingly, document was executed which is part of revenue record and mutation has been effected on that basis.

3. Mr. Kalani submits that initially plaintiff had filed an application before the Court for issuing witness summons to Tahsildar to remain present along with original record of mutation proceeding wherein consent document dated 16.06.1990 has been

preserved. However, the said application was not pressed, as the petitioner was assured that the consent document would be handed over to him by the concerned office. Later on, Tahsil office issued communication dated 14.10.2016 to the effect that original record can not be handed over, but same can be produced on requisition by Court. In this background, petitioners moved application below Exhibit-66 seeking permission to lead secondary evidence in the nature of certified copy of document dated 16.06.1990. The learned Trial Court rejected said application holding that grounds for leading secondary evidence were not made out in terms of Section 65 of Indian Evidence Act, 1872.

4. Mr. Kalani further submits that petitioner is impeded to prove his defence for want of production of original document, and now by the impugned order, even permission to lead secondary evidence has been rejected.

5. Mr. Kalani relies upon the judgment of Hon'ble Supreme Court in case of *Jagmail Singh & Another Vs. Karamjit Singh & Others*, dated 13.05.2020 in Civil Appeal No.1889 of 2020 to contend that certified copy of document can be proved in evidence on the basis of permission to lead secondary evidence. There can be no dispute on the proposition of law espoused in case of *Jagmail Singh (Surpa)*. However, in present case apparently, petitioner could not make out grounds for

granting permission to lead secondary evidence. Pertinently, petitioner pleads existence of document and its availability in original record maintained by Tahsil Office. In this background, the proper remedy available to petitioner is to call witness from Tahsil office along with original record as to mutation proceeding wherein the Kararnama dated 16.06.1990 is alleged to be preserved.

6. In this background, writ petition stands dismissed. However, petitioner shall be at liberty to file fresh application for issuing witness summons to the concerned officer from Tahsil Office to remain present along with original record of mutation proceeding. If such an application is filed within a period of four (04) weeks from today, the learned Trial Court shall consider the same without impeded by impugned order.

[S. G. CHAPALGAONKAR, J.]

HRJadhav