

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 17699 OF 2024

Dattatray Anant Chothe And Ors

...Petitioners

Versus

Vilas Bhanudas Chothe And Anr

...Respondents

Mr. Atharva Bhingardev for the Petitioners.

None for Respondents.

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NITIN
CHAVAN

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CORAM : M.M. SATHAYE, J.
DATE : 14th FEBRUARY 2025

P.C. :

1. Heard the learned Counsel for the Petitioners. Perused the record.
2. The Petitioners/original Defendants are challenging the order dated 24.09.2024 passed by the Civil Judge, Junior Division, Vita, by which the application of the Respondents/Plaintiffs for leading secondary evidence in the form of xerox copy of document dated 01.09.2020, is allowed.

3. According to learned Counsel for the Petitioners, the said document was destroyed in view of the necessary repayments being made and purpose for the said document getting completed. He has invited the Court's attention to paragraph 8 of the written statement in which necessary averments about destruction of the said document is made. He submitted that in view of his case that the said document is destroyed, the xerox copy should not have been taken on record as secondary evidence.

4. I have considered the submissions. It appears from paragraph 9 of the written statement that there are also averments about impounding of the said document since it is not properly stamped. Impugned order shows that prior notice was given by the Respondents to produce the document but the same was not replied. The Trial Judge has kept the Petitioners' objection about admissibility of the xerox copy of the said document open to be decided at the final stage. It is rightly held that execution of the said document is not denied by the Petitioners.

5. There is no perversity or error apparent on the face of the record. In light thereof, no interference is required. The petition is dismissed.

6. Needless to mention that, the objection of the Petitioners about admissibility will be considered at the time of final hearing of the suit, as provided in the impugned order. The Suit shall be decided on its own merits. Rival contention of both sides are kept open.

7. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)