



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO.2426 OF 2024

1. Sau. Asha Ravindra Ujjainkar, Age @
56 yrs, Occ – Agriculturist.
2. Mangesh Ravindra Ujjainkar, Age @
36 yrs, Occ – Agriculturist,
Both R/o Hamalpura, Jagruti
Chowk, Amravati, Tq. & Dist.
Amravati.

...PETITIONERS

VERSUS

1. Ravindra Gulabrao Ujjainkar, Age @
62 yrs, Occ – Agriculturist, R/o
Hamalpura, Jagruti Chowk,
Amravati, Tq. & Dist. Amravati.

...RESPONDENT

Shri S.M. Vaishnav, Advocate for the petitioners.

Respondent is served.

CORAM : PRAVIN S. PATIL, J.

DATED : 28/02/2025.

ORAL JUDGMENT :

RULE. Rule made returnable forthwith.

2. By way of present petition, the petitioners are challenging

the order below Exhibit 41 passed by the Civil Judge, Junior Division, Bhatkuli, District Amravati in R.C.S. No.18 of 2016 dated 25.10.2023.

3. The record shows that, in this matter, on 24.04.2024, notice was issued to the respondent-sole. However as same was not served, therefore, by order dated 02.09.2024, this Court permitted the petitioners to serve the respondent by way of Hamdast. Accordingly, by Hamdast the respondent was served.

4. Despite service of Hamdast to the respondent, the respondent chooses to remain absent before this Court on 11.11.2024, 17.12.2024 and even today none appeared for the respondent.

5. As such, from the record it is clear that the respondent is not interested to prosecute the present petition before this Court.

6. It is the case of the petitioners that in the pending suit, the respondent has filed an application for grant of permission to lead secondary evidence to prove the partition deed bearing No.1141 of 1980 dated 31.03.1980

7. The petitioner/defendant objected the same by raising ground that in the entire plaint, respondent/plaintiff nowhere states or make any statement regarding the alleged partition deed dated 31.03.1980. As

such, in absence of pleading or submission, no permission can be granted to the respondent/plaintiff to lead secondary evidence in respect of alleged partition deed.

8. The Trial Court by the impugned order by recording the reason that respondent/plaintiff being already permitted to lead secondary evidence vide order below Exhibit 28 in the same suit, respondent/plaintiff can be permitted to lead secondary evidence on this document also.

9. Heard the learned Counsel Shri S.M. Vaishnav appearing for the petitioners. After perusal of the impugned order below Exhibit 41 dated 25.10.2023, it is clear that the order is cryptic in nature and no reasons are recorded, which is mandatory as per settled position of law. This Court in the catena of judgments had time and again directed the Trial Court that while passing any judicial order reasons should be recorded, which would reflect the application of mind while deciding the application. But impugned order is without any reasons.

10. It is further stated that this Court in the case of ***Yeshwant Rambhau Chonde vs. Vilas Bapurao Shinde 2007(5) AIR Bom R. 525***, observed in paragraph 17 as follows :

“17. A reading of Section 63 makes it clear as to what is secondary evidence. Section 65 postulates when secondary evidence is admissible. Clause "c" thereof is applicable in the instant case as it is the case of the petitioners that the originals have been lost. In view of the law cited (supra) dealing with the issue as to when secondary evidence can be allowed to be led which has been relied upon by the learned counsel Shri.Naik; what emerges is that secondary evidence can be allowed to be led only when there is a foundation laid by the party concerned for leading it. Since it is the case of the petitioners-plaintiffs that the said documents have been lost, in view thereof, the other parameters as to what efforts were made by the plaintiffs to trace the said documents would also be attracted. The plaintiffs case would, therefore, have to be considered in the light of the said parameters, which have been laid down by the Apex Court as well as from the principles which can be culled out from the judgments cited by Shri.Naik. ...”

11. As such, while deciding the application for granting permission to lead secondary evidence, there should be foundation laid by the party in compliance of Section 65 of the Evidence Act,1872. But in this case, nothing is recorded by the Trial Court to justify on what count, the respondent can be permitted to lead secondary evidence in the matter.

12. It is further pertinent to note that the Trial Court while passing the impugned order has relied upon the order passed below Exhibit 28 in R.C.S. No. 18/2016. Bare perusal of the order dated

08.06.2022 (Exhibit 28), it is seen that same is in respect of sale-deed bearing No.1306 dated 02.11.2012, whereas the respondent, who is seeking permission to lead secondary evidence by his application dated 23.11.2022, is the partition deed bearing No.1141 of 1980 dated 31.03.1980. Both the documents are different, and therefore, it is not proper on the part of the Trial Court to rely on order dated 08.06.2022 (Exhibit 28) while deciding the application below Exhibit 41. On the other hand, independent reasons are necessary to be recorded while deciding Exhibit 41 in R.C.S. No.18/2016.

13. Hence, in view of the above said reasons, the impugned order dated 25.10.2023 passed in R.C.S. No.18/2016 below Exhibit 41 is not sustainable in the eyes of law, accordingly, the same is quashed and set aside.

14. The matter is remanded back to the Civil Judge, Junior Division, Bhatkuli with direction to decide Exhibit 41 in R.C.S. No.18/2016 afresh, in the light of observations made above as expeditiously as possible.

15. The Writ Petition stands disposed of in the above terms.

(PRAVIN S. PATIL, J.)