

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2329 OF 2024

Hemant Radhakrishna Sapale

...Petitioner

Versus

Vyankatesh Devidas Kamat and

Ors

...Respondents

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Mr. Omkar Nagwekar, for Petitioner.

None for Respondents.

CORAM : MADHAV J. JAMDAR, J.

Date : 2nd February, 2026

PC :

1. Heard Mr. Nagwekar, Learned Counsel appearing for the Petitioner. Though served, none appears for the Respondents.

2. By the present Writ Petition filed under Article 227 of the Constitution of India, the Petitioner challenges the legality and validity of the following orders passed by the Learned Judge, Small Causes Court, Bandra Branch, Mumbai in R.A.E. & R. Suit No. 2185 of 1980:

- (i) Order dated 5th August, 2021 passed below Exhibit 136;
- (ii) Order dated 9th August, 2021 passed below Exhibit 144;
- (iii) Order dated 21st September, 2021 passed below Exhibit 213;
- and
- (iv) Order dated 1st October, 2021 passed below Exhibit 220.

3. By the order dated 5th August, 2021, the Learned Trial Court rejected the application below Exhibit 136 seeking issuance of witness summons to the sister of the Plaintiff for proving the case of *bona fide* requirement. The Learned Trial Court held that since the sister had relinquished her share in the suit premises, no useful purpose would be served by issuance of summons to her.

4. By the impugned order dated 9th August, 2021, the application below Exhibit 144 seeking recall of the order dated 5th August, 2021 came to be rejected.

5. Upon perusal of the record, it is evident that the Petitioner–Plaintiff intended to examine his sisters in order to substantiate his case of bona fide requirement. The question whether the sister had relinquished her share is wholly irrelevant for the said purpose. Accordingly, the order dated 5th August, 2021 passed below Exhibit 136 in R.A.E. & R. Suit No. 2185 of 1980 is quashed and set aside, and the application below Exhibit 136 stands allowed.

6. In view of the above order allowing Exhibit 136, nothing survives in the application below Exhibit 144, as the same was filed seeking recall of the order passed below Exhibit 136. Consequently, the

order dated 9th August, 2021 passed below Exhibit 144 is also set aside, as the said application has become *infructuous*.

7. As regards the order dated 21st September, 2021, the record indicates that the documents produced along with the affidavit of evidence were marked as Article X, X/1 and X/2. The Learned Trial Court rejected the said application on the ground that for exercising jurisdiction under Section 65 of the Indian Evidence Act, 1872 and for permitting secondary evidence, there must be some evidence regarding the existence of the original documents, which the Petitioner has failed to establish. In the facts and circumstances of the case, no interference is warranted with the order dated 21st September, 2021. The Writ Petition, to the extent it challenges the said order, stands *dismissed*.

8. Although, in the Writ Petition, order dated 1st October, 2021 passed below Exhibit 220 is also challenged, no submissions are made with respect of the same. Therefore, it is deemed that the challenge to that order is not pressed too.

9. It is accordingly clarified that the challenge to the orders dated 5th August, 2021 and 9th August, 2021 stands allowed in the

aforesaid terms, whereas the challenge to the order dated 21st September, 2021 stands *dismissed*.

10. The Writ Petition is *disposed of* in the aforesaid terms.

[MADHAV J. JAMDAR, J.]