

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO.1304 OF 2014

- 1 Zinga Dattu Badgujar
died, through his L.Rs.
- 1-A Gayabai w/o Zinga Badgujar,
Age 75 years, Occu. Household,
R/o Koshti Wada, Parshi road,
Amalner, District Jalgaon
- 1-B Shobhabai Bagwan Badgujar
Age 52 years, Occu. Household,
R/o Shani Peth, Jalgaon
District Jalgaon
- 1-C Chayabai Suresh Badgujar,
Age 50 years, Occu. Household,
R/o Dindwade, Taluka Jamner,
District Jalgaon
- 1-D Sangita w/o Chandrakant Badgujar,
Age 42 years, Occu. Household,
R/o Fuknagari, Taluka and District
Jalgaon
- 1-E Rama s/o Zinga Badgujar,
Age 48 years, Occu. Agri.,
R/o Balajipur, Taluka Amalner,
District Jalgaon
- 1-F Laxman s/o Zinga Badgujar,
Age 45 years, Occu. Agril.,
R/o Balajipura, Taluka Amalner,
District Jalgaon

..Petitioners

Versus

1. The State of Maharashtra,
Through the Collector, Amalner,
District Jalgaon
2. The Town Planning Authority,
Municipal Council, Amalner,
Through its Chief Officer
3. The Municipal Council, Amalner,
Through its Chief Officer
4. The City Survey Officer,
City Surveyor Office,

Amalner, District Jalgaon

5. Sau. Kantabai Venishankar Joshi,
Age 65 years, Occu. Household,
R/o Baherpura, Amalner,
District Jalgaon
6. Kokila Hasmukh Joshi,
Age major, Occu. Household
7. Leena Hasmukh Joshi,
Age major, Occu. Household
8. Ketan Hasmukh Joshi,
Age major, Occu. Household

Respondents No.6, 7 and 8 at present are
R/o Hit Trading, Karpareshan,
5/2-75/9, Durga Bhavan, 141, R.P.Road,
Secunderabad - 4, Hyderabad,
(Andhra Pradesh)

9. Bhagwan Tukadu Bagul,
Age 80 years, Occu. Pensioner,
R/o Bagul Colony, Station road,
Amalner, District Jalgaon
10. Somnath Shridhar Dabhade,
Age 36 years, Occu. Agri.,
R/o Wakdi, Taluka Chopda,
District Jalgaon
11. Gokul Mulchand Patil,
Age 27 years, Occu. Agri.,
R/o Kalali, Taluka Amalner,
District Jalgaon
12. Prashant Vishnukant Jade,
Age major, Occu. Business,
R/o 24/3, Shrinagar, Amalner,
District Jalgaon
13. Bhushan Ganesh Kharote,
Age major, Occu. Business,
R/o Vitthal Park, A-18, Nasik

.. Respondents

Mr R.R. Mantri, Advocate for petitioners
Mr A.V. Deshmukh, A.G.P. for respondent No.1
Mr G.V. Wani, Advocate for respondent No.3
Mr B.R. Warma, Advocate for respondent No.9
Mr S.A. Kulkarni, Advocate for respondents No.11 to 13

CORAM : N.W. SAMBRE, J.**DATE : 9th December 2015****PER COURT**

Heard.

2. The present petition is by legal representatives of original petitioner who filed Regular Civil Suit No.88 of 2001, praying therein decree for declaration that he is owner of suit property and he be put into possession of the suit property and carry out appropriate mutation along with other ancillary benefits.

3. In the said suit, petitioner moved an application Exh.175 under Order XII, Rule 3 of the Code of Civil Procedure for notice to admit documents. The defendants denied the admission of the documents, so also its contents.

4. Thereafter, Exh.226 an application was moved by the defendants praying that none of the documents be exhibited, based on Exh.178. The said application Exh.226 was moved by same defendants on the ground that few of the defendants have admitted the documents for which notice of admission was given by the plaintiff. The application Exh.226 moved by the defendants based on Exh.178, praying that none of the documents be exhibited, came to be allowed by directing the plaintiff that he is not relieved from producing his evidence in support of the case and as such, he was required to prove the documents. The Court then observed that it is of the view that on the strength of reply of defendants No.1 and 2 Exh.178, the documents should not be exhibited against the contesting defendants.

5. Thereafter, the petitioner moved an application Exh.266 praying therein that the documents, details of which are mentioned in the said Exhibit are specifically proved in the evidence by deposing through the contents thereof and some of the documents are certified copies of the public documents, they be marked as exhibits. The said application Exh.266 moved by the petitioner came to be rejected by order dated 4th February 2014 by the Civil Judge, Senior Division, Amalner, as such present petition.

6. Heard Mr Mantri, learned Counsel for the petitioners, Mr Kulkarni and Mr Warma, learned Counsel for respondents along with learned Assistant Government Pleader at length.

7. Mr Mantri, while trying to make out the case for quashing of the order dated 4th February 2014, passed below Exh.266 rejecting the prayer of the petitioner for exhibiting the documents would urge that the order impugned is not sustainable in the light of scheme of Evidence Act, and on the basis of evidence that he has brought on record. He would urge that the documents were duly examined in examination-in-chief and as such, the trial Court should have treated the said documents as proved and should have exhibited the same. He would then urge that of the documents mentioned in application Exh.266, some are certified copies of public documents which ought to have been exhibited as it is, which is also not considered by the learned trial Court. According to him, the order impugned suffers from non-application of mind, as each of the documents which are mentioned in Exh.266 are not dealt with as to why they should not be exhibited in the impugned order and as such, the impugned order is

not sustainable. According to him, the order impugned is liable to be set aside by remanding the matter to learned trial Court.

8. Learned Counsel for the respondents, while opposing the prayer, would urge that the cross-examination of the petitioner/plaintiff is already over and at that stage, application Exh.266 came to be filed by him. They would further urge that none of the documents are proved by the petitioner in accordance with the provisions of Evidence Act, neither the authority issuing such documents is examined. It is further urged that the stage of exhibiting the documents would have been at the stage of recording the evidence of petitioner-plaintiff. According to respondents, the order impugned is just and proper. They would then urge that the perusal of the documents of which exhibiting is sought demonstrates that same cannot be exhibited at the behest of petitioner, as is rightly held by learned Court below and prayed for dismissal of the petition.

9. Having bestowed my anxious thoughts over the submissions made, it is required to be noted that the contents of the documents are required to be proved by oral evidence, by adducing primary or secondary evidence. In the present case, the documents are sought to be proved by the primary evidence after producing the same and without examining the author, signatory of the same. The evidence of the plaintiff is not sufficient to prove the documents which are authored, signed, executed by some third person.

10. In my opinion, learned Court below was right in rejecting the application of the petitioner, particularly when it was open for the

petitioner to agitate the said issue as regards the proof of the documents and to mark them as exhibits when his evidence was recorded by the trial Court. It appears that at that stage of the trial, the petitioner has not raised issue seeking to exhibit the documents by way of after thought, has moved application Exh.266.

11. Apart from above, perusal of the order impugned reflects that the documents of which petitioner is seeking exhibiting of, he may prove the same in accordance with law at appropriate stage of the matter by producing witness in support to that effect.

12. It is required to be noted here that the Order XVIII, Rule 4 of the Code of Civil Procedure provides for recording of evidence. If the prayer of the petitioner is tested in the light of said provision, it is to be noted that the petitioner is seeking relief contrary to the same.

13. In view of above, in my opinion, the case as is sought to be espoused by the petitioner that documents ought to have been exhibited based on his evidence, appears to have been rightly rejected by the learned Court below.

14. No illegality or material irregularity could be noticed in the order passed by the Court below. As such, petition fails, stands dismissed.

15. At this stage, learned Counsel for the petitioner Mr Mantri seeks continuation of interim relief ordered on 3rd July 2015 for a period of six weeks from today in view of ensuing Christmas vacation.

16. The prayer stands granted. The interim protection ordered by this Court on 3rd July 2015 shall continue for a period of eight weeks from today.

(N.W. SAMBRE, J.)

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