

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

WRIT PETITION NO.5614 OF 2015

Chandrakant s/o Bhagwandas Shah,
Age: 57 years, Occ: Service,
R/o. Anand Niwas, Opposite Gulzar Talkies,
Kolshe Wadi, Aurangabad & anr.

...Petitioners

versus

Kishanlal s/o Bhagwandas Kalda (HUF),
Age: 42 years, Occ: Business,
R/o. 151, Sindhi Colony,
Aurangabad & ors.

...Respondents

.....
Mr. P.M. Shah, Senior Advocate I/b S.P. Shah, Advocate for
petitioners

Mr. A.S. Bajaj, Advocate for respondent Nos. 3A & 4A

.....

CORAM : N.W. SAMBRE, J.

DATE : 20th NOVEMBER, 2015

ORAL ORDER :

Present petitioners-plaintiffs to the Special Civil Suit No. 462 of 2009 have questioned the legality and validity of the order passed below Exhibit-193 on 30/03/2015 by 5th Joint Civil Judge, Senior Division, Aurangabad to the extent of restricting the right of petitioners-plaintiffs as regards production of certified copy of the map from city survey and to confront the witness with the same. It is also observed by the trial Court to prove the contents of the map by calling Superintendent of the said office.

2. Learned Senior Counsel Mr. Shah, while trying to attack the legality of the order impugned, particularly in the light of provisions of Section 77 of the Evidence Act, would urge that condition to which present petitioners are put to by 5th Joint Civil Judge, Senior Division, Aurangabad in Special Civil Suit No. 462 of 2009 below Exhibit-193 is not justifiable in law. He would then urge that the document i.e. map which is produced is admittedly certified copy of public document, which was not drawn or authored at the behest of the present petitioners but was part and parcel of official record of office of City Survey. According to him, the condition as is incorporated in the order, particularly in paragraph-6 of the order impugned to above extent is sustained, prejudice will be caused to the petitioners as said condition amounts to denial of principles of natural justice and fair trial in the suit

3. Mr. Bajaj, learned Counsel for respondent Nos. 3A and 4A, while supporting the order impugned and opposing the submissions made by Mr. Shah, would urge that learned trial Court was prompted to pass the order in favour of petitioners, however, conditions incorporated therein were having regard to the fact that the document, which produced at the advanced stage of the trial i.e. at the time of cross examination of the witness. He would then urge

that the document that is produced on record needs to be proved by the plaintiffs, then only same is permissible to put to the witness of the respondents - defendants, as the evidence of plaintiff is already over and the petitioners cannot be now permitted to put the said document to the witness of the defendants. He would then urge that the petition is liable to be rejected.

4. Having considered the rival submissions, it is required to be noted that application Exhibit-193 came to be moved for production of certified copy of the map that was drawn by the office of City Survey. The occasion for drawing such map was part of official duty of the said authority at the relevant time. The document is quite old and is not authored at the behest of present petitioners.

5. In this background, it is required to be noted that scheme of Section 77 of the Evidence Act, reads thus :

“77. Proof of documents by production of certified copies.—Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.”.

6. Section 83 of the Evidence Act provides for presumption as to maps and plans made by authority of Government, which reads thus :

“83. Presumption as to maps or plans made by authority of Government.—The Court shall presume that maps or plans purporting to be made by the authority of the Central Government or any State Government were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.”

7. In the present case, the document sought to be produced being certified copy of map drawn by public office is required to be accepted, as it is and can be referred to and read in evidence, for which the statute does not call for any proof by adducing oral evidence in view of Section 83 of the Evidence Act.

8. It is also required to be taken note of the fact that if such document, pursuant to Section 77 of the Evidence Act, is produced on record, the defendants will be in a position to explain the same if confronted with and if the petitioners relied upon the same.

9. In view of above, in my opinion, incorporation of condition in the order impugned order dated 30/03/2015 below Exhibit-193 in Special Civil Suit No.462 of 2009 by 5th Joint Civil Judge, Senior Division, Aurangabad, particularly in paragraph-6 i.e. “Obviously neither said map can be shown to the witness nor any question can be put to him. To the extent of contents in said map

plaintiff may call Superintendent of said office. However, the question with regard to contents of the present map is kept open for the debate at the time of evidence to be lead and cross examine. To prove the map, the plaintiff will have to call a relevant witness of T.I.L.R.”, is hereby quashed and set aside.

10. The writ petition, as such, stands allowed in above terms.

[N.W. SAMBRE, J.]