

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

WRIT PETITION NO.6794 OF 2014

1. Rambhau s/o Eknath Sherkar,
Age 32 years, Occu. Labour
2. Parmeshwar s/o Eknath Sherkar,
Age 29 years, Occu. Labour
3. Eknath s/o Dagdu Sherkar,
Age 77 years, Occu. Labour

All R/o Ashok Nagar, Barshi Naka,
Beed, District Beed

.. Petitioners
(Orig.Defendants)

Versus

- Abdul Khaled s/o Wahed Choudhary,
Age 47 years, Occu. Business,
R/o Ashok Nagar, Barshi Naka,
Beed District Beed

.. Respondents

Mr G.K.Thigale (Naik), Advocate for petitioners
Mr Dhananjay Deshpande, Advocate for respondent - sole

CORAM : N.W. SAMBRE, J.

DATE : 24th February 2015

PER COURT

1. The present petition is by original defendants in a suit for specific performance of contract bearing Regular Civil Suit No.94/2007. The said suit has reached to the stage of recording evidence of defendants. At this stage, the present petitioners - defendants moved an application Exh.87 seeking permission to place on record the document - original sale-deed executed by Sahebrao Dagdu Sherkar in favour of defendant No.3. According to him, the said document was taken out by the defendants from the record of Regular Civil Suit No.125/1996 and thereafter at the first instance, has

produced the same during the the course of recording of evidence in the present suit. He submits that the learned trial Court, in the light of the provisions of Order VIII, Rule 1-A (3) of the Code of Civil Procedure rejected the said prayer. According to him, the order is not sustainable, as the order allowing to place the said document on record would not have caused prejudice to the plaintiff. He submits that the production of document will be considered having regard to its evidentiary value in the light of pleadings in the written statement.

2. Learned Counsel for the respondent Mr Deshpande, while strenuously opposing the said submission, would urge that the existence of the document at the time of filing of written statement is not in dispute. The defendants should have been diligent enough at the time of filing their written statement about pleadings in support of said document and production of said document, as provided under the relevant provisions of the Code of Civil Procedure. He submits that in the light of above, the learned trial Court has rightly rejected the application.

3. Having perused the submissions made by respective parties before the learned trial Court and the order impugned dated 15th January 2014 rejecting the said application, it is required to be noted that with the leave of the Court, defendant can produce the document in question, as provided under Order VIII, Rule 1-A (3) of the Code of Civil Procedure. It is not mandatory that the production of document will presume its evidentiary value as proved and will be accepted as it is. The defendants will have to prove the said document by leading

evidence and the learned trial Court to consider the said evidence in line with the pleadings made in the written statement. It will always be available to the respondent-plaintiff to raise objection to the admissibility of evidence *qua* the document – sale-deed in question.

4. In view of above and having regard to the provisions of Order VIII, Rule 1-A (3) of the Code of Civil Procedure, I am inclined to allow the present writ petition.

5. As such, the order dated 15th January 2014, below Exh.87 in Regular Civil Suit No.94 of 2007 passed by 2nd Joint Civil Judge, Junior Division, Beed, is hereby quashed and set aside. The application Exh.87 stands granted. Before accepting the document on record, the petitioners – defendants shall pay costs of Rs.5,000/- to the plaintiff – respondent herein within a period of two weeks from today.

6. In view of joint request made by the parties, hearing of the suit is expedited.

7. Writ Petition stands allowed in above terms.

(N.W. SAMBRE, J.)

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