

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8440 OF 2014

- | | | |
|----|--|-------------|
| 1. | Smt. Sindhubai w/o Dilip Wagh
Age – 50 years, Occ – Agriculture | PETITIONERS |
| 2. | Purushottam s/o Dilip Wagh,
Age – 30 years, Occ – Agriculture | |
| 3. | Ganesh s/o Dilip Wagh
Age – 28 years, Occ – Agriculture | |

All R/o Dhanwate Vasti, Puntamba
Taluka – Rahata, District – Ahmednagar

VERSUS

- | | | |
|----|--|-------------|
| 1. | Ramchandra s/o Anandrao Dhanwate
Age – 83 years, Occ – Pensioner,
R/o 16, IIIrd Floor,
Laxmi – Vishnu Co-op Society,
Ahilyabai Chowk, Kalyan (West)
District – Kalyan 421 301 | RESPONDENTS |
| 2. | Yuvraj s/o Bhikaji Pawar,
Age – 60 years, Occ – Pensioner | |
| 3. | Pruthviraj s/o Yuvraj Pawar,
Age – 25 years, Occ – Agriculture | |

Both R/o “Keshar” Opp- Madhur Sweet,
Sawarkar Nagar, Nashik 422 013

WITH
WRIT PETITION NO.8416 OF 2014

Shrikant s/o Murlidhar Wagh Age – 59 years, Occ - Agriculture R/o Dhanwate Vasti, Puntamba Taluka – Rahata, District – Ahmednagar	PETITIONER
--	------------

VERSUS

1. Ramchandra s/o Anandrao Dhanwate RESPONDENTS
Age – 83 years, Occ – Pensioner,
R/o 16, IIIrd Floor,
Laxmi – Vishnu Co-op Society,
Ahilyabai Chowk, Kalyan (West)
District – Kalyan 421 301
2. Yuvraj s/o Bhikaji Pawar,
Age – 60 years, Occ – Pensioner
3. Pruthviraj s/o Yuvraj Pawar,
Age – 25 years, Occ – Agriculture
- Both R/o “Keshar” Opp- Madhur Sweet,
Sawarkar Nagar, Nashik 422 013

.....
Mr. Vinayak Sudhakar Bedre, Advocate for the petitioners
Mr. K. B. Borde Patil, Advocate for respondents No.1 to 3
.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 1st SEPTEMBER, 2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.
2. The petitions have been moved against orders dated 20th August, 2014 on Exhibit-131 in Special Civil Suit No. 94 of 2009 and dated 18th August, 2014 on Exhibit-144 in Special Civil Suit No. 95 of 2009 instituted by present petitioners for declaration

and injunction. During the court proceedings, the petitioners had sought exhibition of documents 4/28 to 4/36 in special civil suit No. 94 of 2009 and 4/13 to 4/30 in special civil suit No.95 of 2009, which are contended to be carbon copies of receipts by a sugar factory. Having regard to various circumstances and aspects, the court declined to accept request in respect of all the documents under Exhibit-131 and declined wholly the request under Exhibit-144 to exhibit said carbon copies of receipts, having regard to section 90 of the Indian Evidence Act.

3. After hearing learned advocates for the parties, civil judge, senior division, Kopergaon, in order dated 18th August, 2014 on Exhibit-144 in Special Civil Suit No. 95 of 2009 has observed thus -

“It is well settled that a presumption under section 90 of the Evidence Act, 1872 can be raised only in respect of handwriting, signature, execution or attestation of a document, which is more than 30 years old and not in respect of contents of such document. So also, in view of the ratio laid down in Lakhi Baruah's case (cited supra) [AIR 1996 S.C. 1253], presumption under section 90 is not applicable to a copy or a certified copy, even though it is 30 years old.

It is significant to note that documents at Exh.4/13 to Exh.4/30 are not original documents, but same are carbon copies. Therefore, in view of the ratio laid down by the Hon'ble Supreme Court in Lakhi

Baruah's case (cited supra), no presumption as envisaged under section 90 of the Evidence Act, 1872 can be raised in respect of the said documents.

Even otherwise, the application is vague in as much as the plaintiff did not contend as to from which custody documents at Exh.4/13 to Exh.4/30 have been produced, in whose handwriting these documents are and who had signed it. The plaintiff has thus failed to lay the foundation for raising the presumption under section 90 of the Evidence Act, 1872 in respect of documents at Exh.4/13 to Exh.4/30.”

The court considered that the applications do not warrant any consideration and as such, has rejected application Exhibit-144 in special civil suit No.95 of 2009 and partly allowed Exhibit-131 in special civil suit No. 94 of 2009.

4. Learned advocate for the petitioners vehemently submits that from the dates as are occurring and depicted on the carbon copies of the receipts, it is easily discernible that those are the documents more than 30 years old and as such, presumption as arising under section 90 of the Indian Evidence Act, is due to be given to the same and those documents are required to be exhibited. Learned advocate, however, could not overcome the impediments in respect of custody from whom the documents have come forth, about particulars of handwriting and signatures, execution and attestation of the documents have also

not been appearing and more particularly although it is contended that it was the practice by the sugar factory to retain original and give carbon copies to the recipients, the petitioners have not been able to surmount the difficulties over production of originals.

5. Having regard to reasons as are appearing under the impugned orders passed civil judge senior division, Kopergaon, I do not find any infirmity in the same. Writ petitions, as such, are not being entertained and are rejected. Rule stands discharged.

6. At this stage, learned advocate for the petitioners urges to give liberty to the petitioners to make appropriate applications which may take care of the difficulties referred to by the civil judge, senior division in his orders dated 18th August, 2014 and 20th August, 2014. Having regard to that if the petitioners make appropriate applications, learned judge may consider the same on their own merits and in accordance with law. However, this liberty is available for a very short span of time, having regard to that the suit is pending since 2009 and that recording of evidence is going on. Learned advocate for the respondents points out that directions for expeditious disposal of the suits had been issued by this court while dealing with proceedings

from an interim injunction application. Having regard to the same, the trial court may consider disposal of the suits as expeditiously as possible, preferably within a period of one year from the date of receipt of writ of this order.

[SUNIL P. DESHMUKH, J.]

drp/wp8440-14