

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8653 OF 2015

PANDURANG KUSHABA BANKAR
AND OTHERS

PETITIONERS

VERSUS

LILABAI BHAGWANSING PARDESI
AND OTHERS

RESPONDENTS

Mr.P.R.Patil h/f Mr.C.D.Biradar, Advocate for the petitioners.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 26/08/2015

PER COURT :

1. The petitioners are aggrieved by the impugned order dated 22/07/2015 passed by the Trial Court in Special Civil Suit No.216/2014 below Exh.20-D.

2. The petitioners submit that they are original defendants in the said suit. An application was filed below Exh.20 dated 21/08/2014 seeking an order from the Trial Court in the nature of directions to the original plaintiff to produce the original copy of the agreement of sale dated 25/10/2011, prior to the framing of the issues.

3. The plaintiff submitted its say contending that xerox copies of

the documents are on record. There is no provision under the CPC to produce original documents alongwith the plaint. The original documents can be filed at the time of leading of evidence. The plaintiff, therefore, prayed for the rejection of Exh.20.

4. By the impugned order dated 22/07/2015, application Exh.20 has been rejected with the observations by the Trial Court that 'order 7 Rule 14(3) and Order 11 Rule 14 of the CPC permits the plaintiff to file documents at any stage, but with the permission of the Court. After such documents are filed, the defendants are at liberty to cross examine the witnesses of the plaintiff.'

5. Mr.Patil, learned Advocate for the petitioners, therefore, submits that necessary directions should have been given by the Trial Court to the plaintiff to produce the original agreement of sale dated 25/10/2011, before the commencement of recording of oral evidence.

6. I have considered the submissions of Mr.Patil, who has taken me through the petitioner paper book. Since I am disposing off this petition, I am not issuing notice to the respondents.

7. Order 7 Rule 14 (3) of the CPC reads as under :-

“A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.”

8. Order 11 Rule 14 of CPC reads as under :-

“Production of documents : It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.”

9. I find that Order 13 Rule 1 was not pointed out to the learned Trial Court while deciding Exh.20. Order 13 Rule 1 reads as under :

“Original documents to be produced at or before the settlement of issues :- (1) *The parties or their pleader shall produce on or before the settlement of issues, all the documentary evidence in original where the copies thereof have been filed alongwith plaint or written statement.*

(2) The Court shall receive the documents so produced ;

Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

(3) Nothing in sub-rule (1) shall apply to documents -

(a) produced for the cross-examination of the witnesses of

the other party; or

(b) handed over to a witness merely to refresh his memory.”

10. It is thus prescribed in the CPC that the original documents on which the settlement of issues depends and which would form a part of the evidence, will have to be filed alongwith the complaint or the written statement. It is obvious that these documents are required to be filed before the settlement of issues so as to give the litigating parties a fair opportunity to deal with the said documents.

11. I am informed that the Trial Court is likely to settle the issues.

12. Needless to state this petition need not be kept pending in this Court and can be disposed of by observing that the Trial Court shall ensure the compliance of Order 13 Rule 1 of the CPC at the time of settling the issues. This would enable the contesting parties/defendants to have a look at the original documents before commencement of recording of evidence.

13. This petition is, therefore, disposed of with the above observations.

(RAVINDRA V. GHUGE, J.)