

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

WRIT PETITION NO. 9352 OF 2014

Raosaheb Abaji Chaure,
Age: 79 years, Occu. Agril.,
R/o Jivachiwadi, Tq. Kaij,
Dist. Beed.

...PETITIONER

V E R S U S.

1. Mahadeo s/o Shaurao Chaure,
Age: 57 years, Occu. Agri. & Sarpanch,
R/o Jivachiwadi, Ta. Kaij, Dist. Beed.
2. Chintaman S/o Dnyanoba Chaure,
Age: 66 years, Occu. Pensioner,
R/o Jivachiwadi, Tq. Kaij, Dist. Beed.
3. Omprakash S/o Bansilal Bhutada,
Age- 56 years, Occup. Business,
R/o Jivachiwadi, Tq. Kaij, Dist. Beed.
At present Vakilwadi, Tq. Kaij,
Dist. Beed.
4. Bansi S/o Chatrabhuj Saruk,
Age: 61 years, Occu. Agril. & Contractor,
R/o Jivachiwadi, Tq. Kaij, Dist. Beed. ...RESPONDENTS

.....
Mr. P.M. Shinde, Advocate for Petitioner
Mr. S.R. Kedare, Advocate for respondents
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CORAM : SUNIL P. DESHMUKH, J.

DATED : 1st APRIL, 2015

JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally with consent of learned counsel for the parties.

2. The petitioner-original plaintiff is before this court, aggrieved by orders dated 23-09-2014 on Exhibit-81 and Exhibit-82 in Regular Civil Suit No. 76 of 2013, under which learned 3rd Joint Civil Judge, Junior Division, Kaij rejected petitioner's request for letting him to produce the documents – measurement report and map, in respect of the disputed property prepared by the Taluka Inspector of Land Records and calling concerned Surveyor as witness to prove the same.

3. Learned counsel for petitioner submits that application Exhibit-81 has been rejected not for proper reasons and that as a matter of fact, the documents sought to be produced would facilitate the court in making decision in the matter. He submits that documents are measurements and map drawn by the Taluka Inspector of Land Records with reference to government record in respect of the concerned land. He submits that the court has ample power to allow the production of documents at any stage.

4. In support of his submission, learned counsel for the petitioner relies on the judgment of a division bench of Bombay

high court in the case of *Shantabai K. Vardhan and others Vs. Meera G. Patel and another*, reported in 2008(6) Mh.L.J.833, wherein it has been considered that purpose of procedural law is not to frustrate the rights of the parties, law is primarily to achieve the ends of justice fully and finally to decide the controversy between the parties. The division bench has also observed in paragraph No. 9 of the judgment that it cannot be said that under Rule XVIII, Rule 17A of the Code of Civil Procedure, the power of the court to permit the parties to produce additional documents is taken away.

5. Mr. Kedare, learned counsel appearing for respondents-original defendants, however, contends that the suit has progressed further and the plaintiff has already adduced evidence by furnishing documents which he had relied on. He submits, there is no reference in the pleadings to the documents now being sought to be produced. He thus, submits that no fault can be found in the order impugned in this petition.

6. Perusal of the impugned order shows that the request for production of the documents has been rejected as the evidence is in progress and that documents which are sought to be produced on record, have been creations during the pendency of the suit, and that the defendants were not aware of the same. It transpires that documents are concerning measurement of the

land in dispute about which injunction has been sought by the plaintiff-petitioner, which according to him, show that the contention of the plaintiffs are proper and correct. The documents cannot be said to be altogether irrelevant for the reasons that those come from the custody of the Government Officer i.e. Taluka Inspector of Land Records assigned with work of measurement of the land and it appears that the documents may have bearing on the *lis* between the parties. Production of the documents by itself would not decide the matter. It would be open for the respondents-defendants to contest admissibility or otherwise of the documents, or its binding nature on the defendants. It is for the court to consider authenticity and admissibility of the same.

7. In view of this, I deem it appropriate to allow application Exhibit-81. Accordingly, Exhibit-81 is allowed and the petitioner-plaintiff is permitted to produce said documents referred thereunder in the proceeding. It is open for respondents-defendants to contest admissibility and consideration of the same in the evidence.

8. The writ petition, as such, is allowed. Rule is made absolute in aforesaid terms, accordingly.

9. The petitioner is at liberty to make further application for calling concerned witnesses so as to enable him to prove the documents for said purpose. Order dated 23-09-2014 on application Exhibit-82 in Regular Civil Suit No. 76 of 2013 is set aside. The petitioner shall make application for the same purpose afresh, which shall be decided in accordance with law and on its own merits.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK
