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W.P.No.9110.13

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9110 OF 2013

Mahadeo s/o Vajinath Maikar
and ors.

..PETITIONERS

VERSUS

Vaijanath s/o Mahadu Maikar
and ors.

..RESPONDENTS

Mr R.R. Deshmukh, Advocate holding for Mr Rajiv B. Deshmukh,
Advocate for petitioners;
Mr S.S. Manale, Advocate for respondents no.2 & 3

CORAM : N.W. SAMBRE, J.

DATE : 23rd February, 2015

ORAL ORDER :

By the present petition, the petitioners/original defendants no.1 to 3, challenge the order dated 10th September, 2013, passed by 8th Joint Civil Judge Junior Division, Latur, below Exh.114, in Regular Civil Suit No.342 of 2008, whereby respondent no.2/original defendant no.2 has been permitted to lead secondary evidence in respect of the alleged sale deed of the movable property, i.e. tempo.

2. While questioning the legality and validity of the impugned order, learned Counsel appearing on behalf of the petitioners has invited my attention to the fact that the transaction involved in the suit is in relation to two vehicles, bearing registration No. MH-24-9992 and MH-24-A/9697. According to him, in absence of any pleadings in relation to the vehicle bearing registration No.MH-24-A/9697, the impugned order ought not to have been passed by the learned Trial Court thereby permitting defendant no.2 to lead secondary evidence in the matter.

3. Learned Counsel further submits that if required the defendant no.2 may take recourse to appropriate mode of securing certified copy of the document from the office of the Regional Transport Officer. According to him, no case for granting permission under section 65 of the Indian Evidence Act was made out and, thus the impugned order is not sustainable. He, therefore, prayed to allow the petition.

4. Learned Counsel appearing on behalf of respondents no.2 and 3/original defendants no.2 and 3 submits that once the requirement of section 65 of the Indian Evidence Act is satisfied, i.e. copy of notice to produce the document was produced in accordance with provisions of section 66 of the Act, according to him, the learned Trial Court has every authority to pass an order and it is also open for the learned Trial Court to presume a fact in accordance with provisions of section 114 of the Act.

5. Having considered rival contentions of the parties, it is noticed that it is an admitted fact on record that there is compliance of section 66 of the Evidence Act as the notice to produce the document, i.e. alleged sale deed was already issued and defendant no.1 had failed to produce the same.

6. In that view of the matter, in my opinion, the learned Trial Court has rightly taken recourse to the provisions of section 65 of the Evidence Act and has passed the impugned order.

7. No illegality or material irregularity is noticed in the impugned order. In the result, the writ petition stands dismissed with no order as to costs.

(N.W. SAMBRE, J.)

amj