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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11778 OF 2014

Dhankaur w/o Dhammasing Junni
Age – 47 years, Occupation – Household,
R/o Vedant Nagar, MIDC,
Near Railway Station,
Aurangabad

PETITIONER

VERSUS

Deubai w/o Bansi Narwade
Age – 72 years, Occupation – Household
R/o Georai,
Taluka and District – Aurangabad

RESPONDENT

.....
Mr. Milind Patil, Advocate for the petitioner
Mr. P. F. Patni, Advocate for the respondent
.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 1st AUGUST, 2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.
2. The petitioner is plaintiff in Regular Civil Suit No.1306 of 2012 instituted by her seeking direction to sell suit land, described in paragraph A of the plaint, free from encumbrances to the plaintiff and / or her nominees by receiving balance consideration of Rs.1,15,000/-; direction to the defendant to

execute conveyance in favour of the plaintiff and / or her nominees; to deliver possession of suit land; rectification of agreement of sale and / or refund of the amount advanced with interest @ 18% p.a. and injunction from creation of third party interest over the suit land.

3. The respondent herein is the defendant in said suit. Parties hereto would be referred to by their status in said suit, hereinafter.

4. According to the plaintiff, the defendant had executed an agreement of sale dated 10th December, 2009 for sale of 4 Acre land described in the plaint for agreed consideration of Rs.2,15,000/- and from the same, Rs.1,00,000/- had been paid to the defendant. However, while executing the document, a mistake with reference to description of northern boundaries had crept in. Before execution of the conveyance, pursuant to the agreement, it was imperative to obtain consent and no objection from members of defendant's family and remove objections, if any, and to supply documents and deeds of title. However, subsequently it surfaced that there was some litigation in respect of various properties, including the suit land, which was pending in second appeal bearing No.694 of 2010. According to the

plaintiff, the defendant had also executed irrevocable power of attorney of even date in respect of adjacent 5 Acre land in favour of husband of the plaintiff namely Dhammasingh Junni. Around January, 2012, the defendant had instituted a suit against husband of the plaintiff seeking declaration that general power of attorney dated 10th December, 2009 (*supra*) is null and void and for certain other reliefs, in which the defendant had purportedly denied agreement of sale dated 10th December, 2012. Under the circumstances, present suit came to be instituted.

4. It appears that in Regular Civil Suit No.301 of 2009, a compromise had taken place between plaintiff in said suit namely Anjanabai, who is real sister of defendant, seeking partition of properties descending on them from their father, Laxman, including the suit property.

5. It also appears that accordingly, written statement came to be filed by the defendant in Regular Civil Suit No. 1306 of 2012 and the suit since then had proceeded further. The plaintiff had adduced evidence. Her examination in chief and cross examination had taken place. So is the case of the defendant. She had lead her evidence and the matter was on the verge of hearing.

6. In the meanwhile, it appears, the plaintiff had moved an application at Exhibit-64, to produce certain documents and leave accordingly had been sought under the application dated 2nd December, 2014. Said application came to be opposed by the defendant referring to that the defendant had already advanced final arguments and the documents sought, plaint and written statement, are not public documents and said documents have no relevance in present context.

7. The trial court had rejected the request made under application Exhibit-64 referring to that these are not public documents and they are not *ipso facto* admissible in evidence and that there is no reference to the same during the cross examination of the defendant, nor those were relied upon by the plaintiff.

8. Learned advocate for the plaintiff submits that the learned judge ought to have allowed the application seeking production of documents in order to reach to a just decision in the matter. Learned advocate for the plaintiff relies on a decision reported in *AIR 2009 SC 2352 "Laxmi and Another Vs Chinnammal @ Rayyammal and others"* wherein the Supreme Court has observed that ordinarily production of documents may not be refused and it is the duty of

the court, if the party feels that it is essential for proving its case and if it is necessary to arrive at a just decision, such application may be considered. In the circumstances of the case, the court had referred to Order XIII, Rule 10 of the Code of Civil Procedure and had considered that such prayer should be acceded to. He relies on yet another judgment reported in *2012 AIR SC 1727 "Maria Margarida Sequeria Fernandes & Others V. Erasmo Jack De Sequeria"*.

9. Learned advocate for the defendant-respondent however, opposes and submits that the application is moved with an intention to procrastinate the litigation.

10. After hearing learned advocates for the parties and on perusal of the judgments relied upon on behalf of the plaintiff – petitioner, I deem it appropriate that such an application may be considered eschewing pedantic approach. Under the circumstances, the writ petition deserves to be allowed. Accordingly, the writ petition is allowed. Rule is made absolute in terms of prayer clauses "B" and "C". No costs.

[SUNIL P. DESHMUKH, J.]