

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2003 OF 2014**

Mohammed Hassan Malbari & Ors.

..Petitioners

Vs.

Sahid Ahammad & Ors.

..Respondents

Mr. K. H. Holambe Patil for the Petitioners

Mr. Omar Khaiyam Shaikh for the Respondent Nos.1 to 6

CORAM : R. M. SAVANT, J.

DATE : 3rd FEBRUARY, 2015

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 24-1-2014 passed by the Learned Civil Judge Senior Division, (Link Court) Bhiwandi, by which order, the application Exhibit 137 filed by the Defendant Nos.7 to 12 for production of documents came to be allowed. The said application Exhibit 137 was filed for production of 7/12 extracts in respect of the property in another State i.e. Uttar Pradesh showing that the Defendant Nos.7 to 12 are agriculturists. It appears that prior thereto, the Defendants had filed copies of 7/12 extracts in respect of some other lands in Uttar Pradesh below Exhibit 135. It seems that the said 7/12 extracts have already been exhibited by the Trial Court.

2 The said application Exhibit 137 was opposed to on behalf of the Plaintiffs on the ground that the stage for production of documents is already over and that the application is filed at a belated stage as the evidence of the

parties is over and therefore the Plaintiffs would have no opportunity to cross-examine the witness in respect of the said documents. The Plaintiffs have also questioned the documents on the ground that they are fake and forge.

3 The Trial Court has allowed the said application Exhibit 137 on the ground that the copies of the 7/12 extracts are public documents. The Trial Court however, discountenanced the case of the Plaintiffs that the Plaintiffs would have no opportunity to challenge the authenticity of the said documents as according to the Trial Court the Plaintiffs already had an opportunity to do so and for the reasons best known to them the Plaintiffs have not availed of the said opportunity. The Trial Court has further gone on to observe that the said documents are material to decide the controversy between the parties and that the Plaintiffs would have an opportunity to produce any other documents to disprove the contents of the public documents. However, the Plaintiffs has not taken recourse to filing of such proceedings. The Trial Court held that in similar circumstance the order passed by the Trial Court was challenged before this Court which Appeal from Order was dismissed. The Trial Court was therefore pleased to allow the application Exhibit 137 and it seems that pursuant to the impugned order the documents have been marked as Exhibit 141(colly).

4 The principal grievance of the Plaintiffs appears to be that the said

documents are got up documents and are therefore not genuine and the Plaintiffs therefore need to cross-examine the witness of the Defendant Nos.7 to 12. It appears that in respect of the earlier bunch of documents, which were produced before the Tahsildar an FIR has been lodged against the Defendant Nos.7 to 12 at Shanti Nagar Police Station, Bhiwandi.

5 In my view, it would be appropriate if the Plaintiffs are granted an opportunity to cross-examine the witness of the Defendant Nos.7 to 12 i.e. the Defendant No.7 Shahid Ahmed. The Learned Counsel for the Respondent Nos.7 to 12 on instructions states that the Defendants have no objection to the said course of action being followed. It would also be open for the Plaintiffs to lead rebuttal evidence in respect of the said documents. The Trial Court accordingly to fix the matter for cross-examination of the Defendant No.7 on 19-2-2015 when the matter is slated to come up before the Trial Court or any other date that would be fixed by the Trial Court as per its convenience. The Trial Court would also give an opportunity to the Plaintiffs to lead rebuttal evidence after the cross-examination of the witness of the Defendant Nos.7 to 12 if the Plaintiffs so desire. However, both the cross-examination as also the rebuttal evidence to be completed without break. With the aforesaid directions, the Writ Petition is disposed of.

[R.M.SAVANT, J]