

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9825 OF 2014

Uttam Ganpat Rahane and another

.. Petitioners

Versus

Shri. Ganpat Shankar Rahane and others

.. Respondents

Mr. S. M. Sabrad, for the Petitioners.

CORAM : R.M. SAVANT, J.

DATE : 09th FEBRUARY, 2015

PC.

1. The order dated 13.02.2014 passed by the Learned District Judge-2, Niphad, allowing the application Exh.17 for production of additional evidence under Order 41, Rule 27 of the CPC is taken exception to by way of the above Petition.

2. In so far as the document which the Defendants sought to produce by way of additional evidence, the same is a certificate issued in favour of one Suryabhan Bhandare by the Settlement Officer under Section 24(1) of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act. It is required to be noted that in the written statement, the Defendants have set up a defence on the basis of the said document. However, the Trial Court has rejected the said defence on the

ground that the Defendants have not produced any evidence in support of their defence. The instant application Exh.17 came to be filed by the Defendants i.e. Respondents herein for production of the said document i.e. certificate under Section 24(1) of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act. It is the case of the Defendants that the said document was in possession of one Sitaram Bhandare and he was the only person aware of the said certificate and therefore, since the document was in possession of Sitaram Bhandare the Defendants could not lay their hands on the said certificate. The said Sitaram Bhandare has expired. It is therefore their case that recently they have laid their hands on the said document and have accordingly filed the instant application Exh.17. The reasons put forth by the Defendants in respect of their application Exh.17 for leading additional evidence commended acceptance to the Trial Court. The Lower Appellate Court in view of the finding recorded by the Trial Court in the absence of the said document, held that the said document was necessary for adjudication of the Appeal and has accordingly allowed the production of the said document by way of additional evidence. The Learned Counsel appearing on behalf of the Petitioners would question the impugned order on the ground that the Defendants have not satisfied as to why the said document could not be produced earlier and therefore, the Defendants

could not be allowed to produce the said document when the Appeal was at the stage of arguments. The Learned Counsel sought to place reliance on the judgment of the Apex Court reported in (1997) 7 SCC 297 in the matter of **Jaipur Development Authority Vs. Kailashwati Devi**. In my view, in the light of the findings recorded by the Lower Appellate Court, the submissions of the Learned Counsel for the Petitioners cannot be countenanced. In so far as the judgment of the Apex Court (*Supra*) is concerned, in fact the Apex Court in the said judgment has held that under Order 41, Rule 27 even a party who has produced no evidence before the Trial Court can seek such permission. In the instant case, it is not as if the document is being referred to for the first time, as indicated above, the Defendants have raised the defence in the suit by relying upon the said document i.e. certificate issued under Section 24(1) of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act. They could not produce the said document for the reasons mentioned in the application Exh.17. The Lower Appellate Court having deemed it appropriate allowed the production as according to it, it was necessary for adjudication of the Appeal. This Court does not deem it appropriate to interfere in the exercise of discretion by the Lower Appellate Court. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]