

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

925 WRIT PETITION NO. 6036 OF 2014

UDAYLAL BHAIRUMAL ANJANA

VERSUS

BALKRUSHNA BAJIRAO PATHARE AND OTHERS

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Advocate for Petitioner: Mr. Ajit M. Gholap

Advocate for Respondents: Mr. P. S. Pawar

Advocate for Respondents: Mr. R. S. Bhandari

CORAM : V. K. JADHAV, J.

DATE : 27th January, 2016

PER COURT :

1. Heard finally with consent of the parties at admission stage.

2. The petitioner/original plaintiff has filed application Exh. 18 in Special Civil Suit No. 80/2011 to impound document such as agreement for sale in respect of the suit property. The application for impounding of document is allowed by the Court. The petitioner could not find out the original document. Xerox copy drawn by mechanical process was only traced out. By way of application at Exh. 22, the petitioner plaintiff is seeking help of Section 65 of the Indian Evidence Act for permitting him to lead secondary evidence. The said application is strongly resisted by the respondents

defendants by filing say at Exh. 24. The learned trial Judge, by order dated 20.02.2013, rejected the application Exh. 22 on the ground that affidavit is submitted by the power of attorney and that it is for the original plaintiff to explain reason for not submitting the original document on record and thus, rejected the application Exh.22 as not supported by affidavit of the original plaintiff.

3. Learned counsel for the petitioner/original plaintiff submits that on 14.06.2013, the plaintiff has filed application Exh.28, praying therein that the petitioner original plaintiff is ready to file his affidavit and further time may be granted for filing the same. The learned Judge of the trial Court has granted time as last chance. The learned counsel further submits that thereafter, the original plaintiff has submitted his affidavit before the trial Court. The learned counsel submits that no order is passed by the trial court. The trial court has orally stated that since the application at Exh. 22 is already rejected, there is no question of re-considering the application at Exh.22.

4. Learned counsel for the respondents defendants

submits that even though last chance was granted by the order below Exh. 28 to file affidavit, the petitioner plaintiff has not filed affidavit within the time. The learned counsel submits that the trial court has already disposed of application Exh. 22 and therefore, there is no question of deciding the application at Exh. 22 again.

5. It appears from the impugned order dated 20.02.2013 passed below Exh. 22 that learned Judge of the trial Court has observed that since application Exh. 22 is not supported by the affidavit of original plaintiff, the same is not tenable and stands rejected. It appears from the order passed below Exh. 28, dated 14.06.2013, that the learned Judge of the trial Court has considered that if the affidavit is filed on the next date as a last chance, the application at Exh. 22 can be re-considered.

6. In view of this, the order passed below Exh. 22 dated 20.02.2013 is required to be quashed and set aside and the trial Court is to decide the application at Exh. 22 afresh in the light of the affidavit submitted original plaintiff. Hence following order:

O R D E R

i.Writ petition is partly allowed.

ii. The order dated 20.02.2013 passed below EXh. 22 in Spl. C. S. No. 80/2011 is hereby quashed and set aside.

iii. Learned Civil Judge, Senior Division, Ahmednagar shall decide the application at Exh. 22 afresh in the light of affidavit submitted by the original plaintiff.

iv. The trial Court, while considering the application at Exh. 22, shall take decision about the costs which this Court has directed the petitioner to deposit, vide order dated 22.07.2014.

7. Writ petition is accordingly disposed of. No order as to costs.

(V. K. JADHAV, J.)

JPC