

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 3420 OF 2015

Tulsabai Mohan Pardeshi

Age: 64 years, Occu. Agriculture,

R/o. Kandari,

Tal & Dist. Jalgaon

...Petitioner

Versus

1] Mohan Shenphadu Pardeshi
Since deceased through his legal heirs

1A] Smt. Sudhabai Mohan Pardeshi
Age: 55 years, Occu. Household

1B] Sagar Mohan Pardeshi
Age: 36 years, Occu. Education

Both R/o. Kandari, Tal. & Dist. Jalgaon

1C] Meerabai Uttam Pardeshi
Age: 40 years, Occu. Household
R/o. C/o. Uttam /Gopal Pardeshi
Sunasgaon, Tal. Jalgaon Jamod,
Dist. Buldhana

1D] Chhotibai Sanjeev Pardeshi
Age: 37 years, Occu. Labour,
R/o. Kandari,
Tal. & Dist. Jalgaon.

1E] Munnibai Subhash Pardeshi
Age: 36 years, Occu. Household,
R/o. Motala, Tal. Bhusawal,
Dist. Jalgaon

1F] Mathurabai Shenphadu Pardeshi
Age: 88 years, Occu. Household,
R/o. Kandari, Tql. & Dist. Jalgaon

2] Ashabai Shenphadu Pardeshi
Age: 70 years, Occu. Agriculture

3] Mathurabai Kisan Pardeshi
Age: 65 years, Occu. Household

Petitioner Nos. 2 & 3 R/o. Raipur,
Tal. & Dist. Jalgaon

...Respondents

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Mr. P. S. Shendurnikar, Advocate for petitioner

Mr. V. A. Pawar, Advocate for respondents No. 1A to 1E

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CORAM : SUNIL P. DESHMUKH, J.

DATE : 18th MARCH, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally, with consent.

2. The petition has been moved, aggrieved by order dated 26-11-2013 on Exhibit-25 in Regular Civil Appeal No. 189 of 2007 passed by Additional District Judge, Jalgaon, refusing the request thereunder to take an action which is ministerial in nature having regard to the order dated 21st April, 2004 on Exhibit-76 passed by 4th Joint Civil Judge, Senior Division, Jalgaon in Regular Civil Suit No. 545 of 2002.

3. Petitioner had instituted Regular Civil Suit No. 545 of 2002 seeking declaration and partition of her 1/12th share in the suit property including monetary compensation to be received in respect of acquisition of land in Land Acquisition Reference No. 460 of 2001. The respondents upon appearance had filed joint written statement. Issues were framed and the suit proceeded with.

4. Petitioner had led oral and documentary evidence in support of her claim and had filed affidavit of examination-in-chief and was also cross examined by the respondents.

5. During the course of evidence, petitioner had relied on copies of certain documents viz; Mutation Entry No. 1335 and record or rights as referred to in the list of documents – Exhibit-77. These documents were also referred to and relied on in the examination-in-chief and had accordingly requested the trial court to exhibit the same. Respondents did not dispute the documents relied upon by the petitioner.

6. However, under inadvertence, the certified copies of public documents though were duly proved, were not exhibited during the trial.

7. Respondents, aggrieved by the judgment and decree passed by the trial court, have been in Regular Civil Appeal No. 189 of 2007. Petitioner and her counsel were under impression that aforesaid documents must have been duly exhibited. However, during pendency of appeal while record and proceedings was being seen, it came to the fore, that the documents referred to herein above had been formally remained to be exhibited. With reference to the same, as such, application Exhibit-25 seeking to formally exhibit certified copies of the public documents relied upon and proved by present petitioner had been moved.

8. The appellate court in the impugned order has observed thus;

" 1/- Perused the application, documents. Heard Ld. Advocate for the appellant and the respondent. Respondent says that, the 7/12 extracts and mutation entries were referred in the evidence but they are not exhibited by inadvertence. They should be taken out from "D" file and they should be exhibited Ld. Advocate Shri Keskar for the appellant argued that, the application amounts to giving permission to lead further evidence Order 41 Rule 27 of The Code of Civil Procedure. He also argued that this is permissible only if lower court had

refused to admit some evidence or if it was not available etc.

2/- Ld. Advocate Shri Paranjape argued that the documents were in examination in chief but they were not exhibited so they need to be exhibited by now. Ld. Advocate Shri Keskar also argued that suit was filed claiming partition in the amount of compensation. Such suit is not maintainable. So the exhibiting 7/12 extract etc. is out of question.

3/- Evidence of plaintiff/respondent No.1 did mention that, the 7/12 extracts and mutation entries are filed they be exhibited. Ld. Civil Judge referred to the suit property in para No.6 of the Judgment. He said that, suit properties are acquired by the Government.

4/- Appeal is continuation of the suit. Suit was for partition. Suit properties were not disputed. The 7/12 extracts and mutation entries were referred to in the evidence of the plaintiff. It is seen that, they are inadvertently not exhibited. If I allow the application the documents which were not exhibited they will have to be taken on record i.e. in "C" file and they will have to be exhibited in the file of the suit. Respondent does not want to produce those documents. As said earlier there was no dispute about the properties and their nature. So I hold that, the application as such is not tenable."

9. It appears that the petitioner can seldom, be considered to be liable and/or responsible for the omission of performing requisite act. In the circumstances, request under application Exhibit-25 appears to be legitimate, exhibition of documents is a formality in the present facts and circumstances.

10. Taking overall view in the matter, in order to avoid controversy and inconvenience to the parties and having regard to the facts as have been appearing hitherto which are not in dispute, I deem it appropriate and expedient and it would be in the interest of justice if the request, being made, is allowed.

11. In the circumstances, writ petition is allowed. Rule is made absolute in terms of prayer clause (A). Accordingly, Exhibit-25 in Regular Civil Appeal No. 189 of 2007 pending before the Additional District Judge, Jalgaon stands allowed.

(SUNIL P. DESHMUKH, J.)

sms