

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3084 OF 2014

LAXMAN PARVATI LONDHE
VERSUS
JALINDAR PARVATI LONDHE AND OTHERS

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Mr. N. V. Gaware h/f Mr. G. D. Tanpure, advocate for the petitioner .
Mr. R. R. Karpe, advocate for respondent Nos. 20 to 23.

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CORAM : V. K. JADHAV, J.

**Date of reservation : 22.01.2016
of order**

**Date of pronouncement : 28.01.2016
of order**

ORDER :-

1. By consent, heard finally.
2. The petitioner/original plaintiff has instituted a suit for partition, separate possession, declaration and a decree of perpetual injunction. On 19.02.2014, the petitioner/original plaintiff tendered an application Exh. 131 in the said suit for production of documents. According to the petitioner/plaintiff, the documents are public documents and having a material bearing on the decision of the case. Trial Court, by impugned order dated 19.03.2014 passed below Exh. 131, rejected the said application. Hence this writ petition.

3. Learned counsel for the petitioner/plaintiff submits that all the documents fall in the category of public documents. Learned counsel further submits that the trial court has failed to consider the provisions of Order XIII of the Code of Civil Procedure. Learned counsel further submits that during the course of evidence, petitioner/plaintiff was subjected to cross-examination pertaining to the documents referred in the pleadings. Even though the respondents/defendants have not denied the very existence of those documents, since the petitioner/plaintiff was subjected to cross-examination on that point, petitioner/plaintiff had taken efforts to find out the old record which ultimately took considerable time. Learned counsel submits that production of the aforesaid documents is necessary in the interest of justice. Learned counsel for the petitioner/plaintiff, in order to substantiate his submissions, places his reliance on a decision of the Apex Court in the case of ***Billa Jagan Mohan Reddy V/s. Billa Sanjeeva Reddy***, reported in **1994 (4) SCC 659**.

4. Learned counsel for respondents/original defendants submits that the petitioner/plaintiff has submitted application Exh. 131 at a belated stage. Learned counsel submits that evidence of both the sides has been completed and when the matter is fixed for arguments, petitioner/plaintiff has filed application Exh. 131 for

production of documents. Respondents/defendants would not get an opportunity to cross-examine the witnesses on the basis of those documents. Learned counsel further submits that though the said documents are in the custody of petitioner/plaintiff, the same were not produced before the court at appropriate stage. Learned counsel submits that petitioner/plaintiff has not explained the delay. Learned counsel further submits that learned Judge of the trial court has rightly rejected application Exh. 131.

5. In view of the provisions of Order XIII Rule 1 of the Code of Civil Procedure, parties are required to produce all the documents along with the pleadings before settlement of issues. It is not disputed that the documents sought to be produced on record are public documents. It appears that there is delay in production of those documents and application Exh. 131 came to be filed at the stage of arguments. However, it appears that the documents sought to be produced along with application Exh. 131 are relevant to decide the real issue in the controversy.

6. In the case of **Billa** (*supra*) relied upon by learned counsel for the petitioner/plaintiff, the Apex Court has made observations in paragraph No. 4 of the judgment as follows :

“(4) ORDER 13, Rule I provides thus :

“1. Documentary evidence to be produced at or before the settlement of issues (1) The parties or their pleaders shall produce, at or before the settlement of issues, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in court, and all documents which the court has ordered to be produced.

(2) The court shall receive the documents so produced : Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.”

It is clear from its bare reading that the parties or their counsel shall be required to produce all the documentary evidence in their possession or power which they intend to rely on to establish their right along with pleadings or before settlement of the issues. The court is enjoined under Sub rule (2) to receive such documents provided they are accompanied by an accurate list thereof prepared in the prescribed form. If they are not in the party's possession or custody, it shall be filed by the party along with an application to condone the delay in filing them. The explanation for delay is not as rigorous as one filed under Section 5 of the Limitation Act. These documents were not in the possession or custody of the appellants, but they have obtained certified copies from the Revenue Authorities and sought to be produced. It is undoubted that there is a delay in production of the said documents. But the trial court had stated that the application was filed at the stage of arguments, seeking to produce those documents and sought to rely upon the documents. It is settled law that, if the documents are found to be relevant

to decide the real issue in the controversy, and when the court felt that interest of justice requires that the documents may be received, exercising the power under Order 41, Rule 27 Civil Procedure Code the appellate court would receive the documents and consider their effect thereof. When such is the position, when the documents are sought to be produced in the trial court, before the arguments are completed, normally they may be received; an opportunity given to prove them and rebuttal if any and their relevance and effect they may have, be considered in deciding the issues arising in the controversy. Under these circumstances, the trial court was not justified in refusing to condone the delay and to receive the documents. The High Court also committed the same error in not considering the effect in this behalf in the right perspective....”

7. In the light of above discussion, I do not think that the trial court is justified in rejecting the application Exh. 131. Trial Court may give an opportunity to the respondents/defendants to rebut the said documentary evidence. Hence the following order :

ORDER

- I. The Writ Petition is hereby allowed.
- II. The order below Exh. 131 dated 19.03.2014 passed by Civil Judge, Senior Division, Shrigonda, in Regular Civil Suit No. 35 of 2007 is hereby quashed and set aside.
- III. The application Exh. 131 filed in Regular Civil Suit No. 35 of 2007 is hereby allowed.

- IV. Trial Court is hereby directed to receive the documents and give an opportunity to the parties to prove the documents, if found necessary, and also give an opportunity to the respondents/defendants to rebut the said documentary evidence.
- V. Writ Petition is accordingly disposed of. No costs.

(V. K. JADHAV, J.)

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