

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7931 OF 2014

TRIMBAK WAMAN GARUD AND OTHERS
VERSUS
RAVALESHWAR MAHILA SHAIKSHANIK SANSKRUTIK MANDAL,
DHULE AND OTHERS

.....
Advocate for Petitioners : Mr. Kulkarni Mukul S.
Advocate for Respondents 1 to 4: Mr. Mahesh H. Patil
.....

CORAM : V. K. JADHAV, J.

DATED : 4th JANUARY, 2016

P.C. :-

1. Heard.
2. The petitioners are original defendants in Special Civil Suit No. 169 of 2010 instituted by the respondents herein, for relief of specific performance of agreement. The petitioners/original defendants resisted the suit by filing their written statement. On the basis of rival pleadings of the parties to the suit, learned Judge of the trial court framed issues and accordingly, parties went on trial. Plaintiff examined witness No.1 and he was cross examined by the petitioners-defendants. The petitioners-defendants however, filed an application Exh. 37 for calling record and proceeding of the various proceedings. Learned Judge of the trial court, by impugned order dated 17.7.2014 rejected the said application. Hence, this writ

petition.

3. Learned counsel for the petitioners submits that the property involved in the suit is bearing Plot No. 47 out of survey No. 14/1 admeasuring 3414 square feet. The property was owned by mother of the petitioners viz. Smt. Sumatibai Garud. The respondents contend that Smt. Sumatibai Garud, who died long back, had orally agreed to sale the suit property in their favour in the year 1990. In the year 1994, when the respondents tried to construct on the suit property, the complaint was filed against them by late Sumatibai Garud alleging that criminal trespass was committed by them on the suit property. Accordingly, case was registered against respondents as R.C.C. No. 43 of 1994 and the same was disposed of in the year 1996. Moreover, present respondent No.3 had also filed criminal case against the petitioners in respect of the same plot and the same is renumbered as R.C.C. No.10 of 2000. In addition to these criminal cases, one Civil Suit bearing R.C.S. No. 252 of 2011 in respect of the same property is also pending before the learned C.J.J.D. Dhule. In the aforesaid proceedings, the respondents herein have not given any reference about the alleged oral agreement of the year 1990 by mother of the petitioners. According to the learned counsel, the respondents despite being aware of the said documents, suppressed the same in the present proceedings. Learned counsel thus submits

that the petitioners original defendants have, therefore, rightly filed an application Exh.37 for calling of record and proceedings of the said proceedings. However, the learned Judge of the trial court, by the impugned order dated 17.7.2014, has rejected the same erroneously.

4. Learned counsel for the respondents submits that the petitioners can very well file certified copies of the judgment, if required in the present suit and there is no need for calling of the record and proceedings. Learned counsel further submits that not a single document is placed on record by the petitioners-defendants from those proceedings and application Exh.37 is filed for calling record and proceedings.

5. It appears that the petitioners defendants have not produced any documents on record alongwith their written statement. Even when witness No.1 for the plaintiff step up in the witness box, copies of the previous statements were not produced on record to confront the witness and surprisingly, by an application Exh.37, the record and proceedings of various proceedings sought to be called. Learned Judge of the trial court has rightly observed that even in the application Exh.37, no particulars of the document which the petitioners defendants intend to put to the witness during cross examination, are mentioned. Even there is no reference to the

context in which bulky record of three cases is requested to be called. So far as the statements under Section 161 of the Cr.P.C. are concerned, if certified copy is produced on record and if the particular part of statement is confronted to the witness, there is no need for calling of original statement, if the witness admits the portion of his earlier statement confronted to him. However, the petitioners-defendants have not produced any documents alongwith their written statement before the Court below so as to justify their application Exh.37 calling bulky record of R.C.C. No. 43 of 1994 disposed of by the IInd joint J.M.F.C. Dhule, R.C.C. No. 10 of 2000 pending in the Court of J.M.F.C. Dhule as well as the R.C.S. No. 256 of 2011 pending before the 11th Joint C.J.J.D. Dhule. The learned Judge of the trial court has rightly rejected the application Exh.37.

6. In the light of above discussion, there is no substance in the writ petition. The writ petition is hereby dismissed. No costs.

(V. K. JADHAV, J.)

rlj/