

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

WRIT PETITION NO. 8411 OF 2014

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SHANTILAL SURAJMAL MUGDIYA AND OTHERS
VERSUS
RAGHUNATH GOPINATH MHASRUM AND OTHERS

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Advocate for Petitioners : Mr Y V Kakde
R/ 1,2,3a To 3 Served – absent
R/ 4 Served Through Paper Publication- absent.

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CORAM : V.K. JADHAV, J.

Dated: February 24, 2016

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PER COURT :-

1. The petitioners are the original plaintiffs instituted a suit bearing Regular Civil Suit No.252 of 2003 for recovery of possession. The defendants in response to the summons issued appeared in the suit and strongly resisted the suit by filing their written statement. During the pendency of the suit, the petitioners have filed an application at Exh.93 for sending the disputed documents and admitted signatures of deceased Surajmal for the opinion of the hand writing expert. The learned Judge of the Trial Court by impugned order dated 1.7.2014 passed below exh.93 in Regular Civil Suit No.252 of 2003 rejected the application. Hence, this Writ Petition.

2. The learned counsel for the petitioners submits that, deceased Surajmal during his lifetime given the suit land gat no.189 admeasuring 4 Acres to respondent no.1/defendant no.1 for cultivation. Learned counsel further submits that, the petitioners have approached the Court with a specific pleading that the defendant no.1 got executed one bogus sale deed of the said land in his favour and deceased Surajmal had never executed the sale deed in favour of the defendant no.1 in respect of the suit land. Learned counsel further submits that, the petitioners/plaintiffs filed the application at exh.93 on 23.10.2013 when the evidence of defendants was to commence. The learned Judge of the trial court, instead of deciding the application Exh.93, proceeded with recording of the evidence of defendant no.1 and accordingly, cross examination of defendant no.1 was completed on 4.12.2013. The disputed lease deed and sale deeds are at exh.84 and 85 respectively. The same are the certified copies of the original. The learned counsel submits that defendant no.1 after the examination of the petitioners/plaintiffs filed an application at Exh.86 seeking permission to lead

secondary evidence in respect of the said documents namely lease deed and sale deed respectively. The Trial Court has allowed said application, however, rejected the application filed by the petitioners/plaintiffs on the ground that the application is filed belatedly after closing the evidence. Learned counsel submits that, the burden of issue no.2 is on the petitioners/plaintiffs. Learned counsel submits that the Trial Court has not considered the same and rejected the application Exh.93.

3. Even though respondents/defendants are duly served, none appears for them. Even notice of final disposal is issued and served on them, none appears for them.

4. It appears that, the petitioners/plaintiffs have filed application Exh.93 before the evidence of the defendants commences. The petitioners/plaintiffs have closed their evidence by filing purshis at Exh.66, but their application at exh.93 was pending. Instead of deciding the said application, the trial court has proceeded with

recording of evidence of defendant no.1 and accordingly, cross examination of defendant no.1 was completed on 4.12.2013. The Trial Court has rejected the application at exh.93 by impugned order dated 1.7.2014. It is pertinent to note that, the trial court has allowed the application filed by the respondents/defendants at exh.86 to lead secondary evidence in respect of the same documents. The Trial Court ought to have allowed the application at exh.93 for the just adjudication of the suit. The burden of issue no.2 is on the petitioners/plaintiffs and the petitioners/plaintiffs approached the Civil Court with a specific pleadings that false documents has been prepared by the respondents/defendants in respect of the suit land.

5. In view of the above discussion, following order is passed.

ORDER

- I. Writ Petition is hereby allowed.
- II. The order dated 1.7.2014 below Exh.93 in Regular Civil Suit No.252 of 2003 passed by the learned Civil Judge J.D., Gangapur, is hereby quashed and set aside.

III. Application Exh.93 is hereby allowed in terms of its prayer clauses.

IV. Writ Petition is disposed of accordingly.

V. In the circumstances, there shall be no order as to costs

(V.K. JADHAV, J.)

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aaa/-