

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 1102 OF 2016

Shri. Nemsinha Ganeshsinha Rajpurohit,
Age Major, Occupation Business,
R/o. Vardhaman Housing Society,
Ward No. 1, In front of Dr. Aghase Hospital,
Shrirampur, Dist. Ahmednagar,
through his power of attorney holder
Shri. Babusingh Motisingh Rajpurohit,
Age 38 years, occu. Business,
R/o. C/o. Bhagwati Sweet Mart, 168,
Ground Floor, Navi Peth, M.G. Road,
In front of Nath Plaza, Jalgaon,
Dist. Jalgaon.

....Petitioner

Versus

Shri. Sunil Malsi Jain,
Age 61 years, Occu. Business,
R/o. 168, Navi Peth, M.G. Road,
Jalgaon, Tal. & Dist. Jalgaon.

....Respondent.

...
Advocate for Petitioner : Yawalkar Siddharha B.
Advocate for Respondents : S.S. Bora
...

CORAM : T.V. NALAWADE, J.
DATED : 26th August, 2016.

JUDGMENT :

- 1) Rule. Rule made returnable forthwith. By consent,
heard both the sides for final disposal.
- 2) The proceeding is filed to challenge the order made
on Exh. 27 in Regular Civil Suit No. 202/2013.

3) It appears that Nemsinha has filed suit for relief of declaration that he is tenant in the shop premises. In the said suit, Sunil, owner of the property has filed counter claim for possession by contending that the possession of Nemsinha is as licensee and not as a tenant.

4) By filing the aforesaid application, plaintiff prayed for giving direction to defendant Sunil to produce the document as under :-

"3.1 Three Original agreements,

A) for the period from 1/4/2009 to 28/2/2010,

B) Second agreement for the period from 1/4/2011 to 31/3/2012,

C) Third agreement for the period from 21/6/2012 till 20/6/2013.

3.2 Details of deposit amount, how defendant Sunil Malsi Jain, appropriated in his accounts, on the basis of agreement referred to in his written statement and counter claim with all necessary book entries, credits to his bank account, etc."

5) After hearing both the sides, the Trial Court rejected the application. It appears that the document described as 3.1 (C) is already on record. Other two documents 3.1 (A) and 3.1 (B) are not on record, but they are registered documents and

the Court has observed that as they are registered documents, certified copy, copy brought on the record, secondary evidence can be given in respect of those transactions. Defendant Sunil has contended that these documents are not in his possession. As these documents are registered documents and Sunil, defendant is not admitting the possession of the documents, when he ought to have been in possession, in ordinary course, the Court ought to have considered the prayer of plaintiff Nemsinha to grant permission to lead secondary evidence. It appears that though some observations are made to the effect that Nemsinha is entitled to lead evidence, permission is not granted to lead secondary evidence. In view of these circumstances, this Court holds that to that extent the application at Exh. 27 ought to have been allowed and so, interference is warranted.

6) So far as 3.2 is concerned, the learned counsel for petitioner submitted that prayer in respect of 3.2 is conceded.

7. In view of these circumstances, the petition is partly allowed. The order made by the learned Judge of the Trial Court in respect of rejection of the application filed for granting

permission to lead secondary evidence is hereby set aside. Permission is granted to lead secondary evidence in respect of documents 3.1 (A) and (B) only. The Trial Court is expected to decide the suit within a period of one year from the date of receipt of the order.

Rule is made absolute in aforesaid terms.

[T.V. NALAWADE, J.]

ssc/