

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

935 WRIT PETITION NO. 581 OF 2016

CHANDA ASHISH MODANI AND OTHERS
VERSUS
CHANDULAL MANIKCHAND GANDHI DIED THROUGH LRS
SNEHALATA CHANDULAL GANDHI AND OTHER

.....
Advocate for Petitioners : Mr. V.N.Maney And Mr. A.N.Irpatgire
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CORAM : V. K. JADHAV, J.

DATED : 25th FEBRUARY, 2016

PER COURT :-

1. The petitioners/original defendant Nos. 3 to 7 have challenged the order dated 05.10.2015 passed by the Joint Civil Judge Senior Division, Osmanabad below Exh.130 and Exh. 134 in R.C.S. No.170 of 2005. The petitioners/defendants filed the said applications Exh.130 and Exh.134 before the trial court to de-exhibit the documents at Exh.122 and 123.

2. Learned counsel for the petitioners submits that the said documents Exh. 122 and Exh.123 were wrongly exhibited in absence of the advocate of petitioners/defendants. Learned counsel submits that the Taluka Inspector, Land Records was appointed as a Court Commissioner by the court. However, he did not comply the order of the court. The said Court Commissioner was examined at Exh.121 in absence of the petitioners/original defendants. Learned counsel

submits that the copy of Panchanama and Map, thus, came to be wrongly exhibited as Exh. 122 and Exh.123, respectively.

3. It appears from the impugned order that the Court Commissioner came to be examined at Exh.121. The said Court Commissioner, as per directions given by the trial court, visited the spot and carried out the measurement by drawing Panchanama. Furthermore, as per his deposition, he has also prepared a map in light of the measurement carried out by him. In view of his statement on oath before the court, the said Panchanama is exhibited and marked Exh. 122 and the map is marked Exh.123. It is true that so far as the application Exh.124 is concerned, the same is filed by a colleague of the advocate on record representing the petitioners/defendants. However, it appears from the record that the Court Commissioner is yet to be cross-examined by the petitioners/defendants. There is absolutely no question of de-exhibiting the said documents because the Court Commissioner, who came to be examined by the trial court, is the author of the said documents. In light of these observations, and since cross-examination by the petitioners/defendants is deferred in view of order passed below Exh.124, the writ petition is disposed of. No costs.

(V. K. JADHAV, J.)

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