

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NOS.239, 241 and 242 of 2016**

1. Mr. Manguesh Rajaram Wagle
(Orig. plaintiff No.2a)
2. Mrs. Smita Manguesh Wagle,
(Orig. plaintiff No.2b)
Both Major,
Both residents of near
'Mahalaximi Temple'
Dada Vaidya Road,
Panaji Goa, ... Petitioners.

Vs.

1. Mr. Suresh D. Naik
Major,
C/o 'Hotel Republica',
Opp. Secretariat, Panaji
2. Mr. Abdul Razak (Since deceased)
C/o Hotel Republica
Opposite old Secretariat, Panaji,
- 2(i) Mrs. Sayeeda Abdul Razak,
Major, Widow,
- 2(ii) Mr. Mohammed Anif,
Major, Son,
- 2(iii) Miss Amira Abdul Razak,
Major, Daughter,
- 2(iv) Mrs. Farha Abdul Razak,
Major, Daughter,
- 2(v) Mr. Matheen I. Sait,
Major, Son-in-law,
- 2(vi) Mrs. Sadia Abdul Razak,
Major, Daughter,
- 2(vii) Mr. Ajaz Ahmed,
Major, Son-in-law,

All residents of 'Mubarak Manzil',
Opposite Electricity
Department Quarters,
Aquem, Margao-Goa
(original defendants)

3. Mrs. Suman Anand Naik Kurade,
(Orig. plaintiff No.2c)
Major, daughter,
4. Dr. Anand G. Naik Kurade,
(Orig. plaintiff No.2d)
Major,
Son-in-law,
Both residents of near
Sangam Sagar-B-168,
East Kailash,
New Delhi,
5. Mrs. Sharad Suresh Shirwaikar,
(Orig. plaintiff No.2e)
Major, Daughter,
6. Mr. Suresh W. Shirwaikar,
(Orig. plaintiff No.2f.)
Major, Son-in-law,
Both residents of Shraddha,
Aquem Alto, Margao-Goa,
7. Dr. (Mrs.) Sheela G. Laud,
(Orig. plaintiff no.2g)
Major, Daughter,
8. Dr. Ganan W. Laud,
(Orig. plaintiff No.2h)
Major, Son-in-law,
Both residents of 123,
Shrub Hollow Road,
Hamilton Park,
New York 11576,
U.S.A.
9. Mrs. Rekha S. Talwadkar,
(Orig. plaintiff No.2i.)
Major, Daughter,

- Smt. A. Agni, Senior Advocate with Ms. A. Kamat, Advocate for the respondent nos.1 and 2(i) to 2(vii) in all the petitions.

Pronounced on :- 16th September, 2016

Rule in all the petitions. The learned Counsel
for the contesting respondent nos.1 and 2(i) to 2(vii)

waives service. Heard finally by consent of the parties.

2. All these petitions are between the same parties and arise out of the orders passed in R.C.S. No.279/2000/D. They involve common and connected questions of law and fact and as such, are being disposed of by this common judgment.

3. The brief facts, necessary for the disposal of the petitions may be stated thus :

That 'Garage premises' situated on the ground floor of a building known as 'Yasin Manzil' standing on Chalta No.126 of P.T. Sheet No.66, City Survey of Panaji are the subject matter of dispute and are hereinafter referred to as the suit premises.

The petitioners herein are the original plaintiff nos.2(a) and 2(b) while the respondent nos.1 and 2(i) to 2(vii) are the original defendants. Rest of the respondents are co-plaintiffs, along the plaintiffs. For the sake of convenience, the parties are referred to in their original capacity as the plaintiffs and defendants.

The original plaintiff Manguesh Wagle and now deceased Anandibai Wagle filed RCS No.279/2000/D (Old Special Civil Suit No.5/1992) against the defendants Suresh D. Naik and now deceased Abdul Razak for permanent injunction, restraining the defendants or anybody on their behalf from interfering with the possession of the plaintiffs over the suit premises and alternatively, for "restoring back" the possession of the suit premises along with damages.

The case made out in the plaint is that the plaintiffs are the tenants in possession of the suit premises. It is contended that the original defendant no.2 Shri Abdul Razak (since deceased) in collusion with defendant no.1, Suresh Naik, had obstructed the entry and user of the suit premises, which was being used for parking of vehicles.

4. It is contended on behalf of the defendants that the possession of the suit premises was surrendered by original tenant, Shri Rajaram Wagle, prior to his death, in the year 1981. Subsequently, in or about 1990, the suit premises were given to the defendant no.1 Suresh Naik, who is running liquor

business therein under two licences bearing nos.129/1992 and 63/1992. There is some dispute as to in respect of which premises, the application for Excise Licence was made and the premises in respect of which the licences were obtained.

5. The learned Trial Court framed issues, out of which, issue nos.3 and 4 are relevant for the present purpose and they read as under :

Issue No.3 - Whether the defendant no.1 proves that he was inducted by the defendant no.2 in the suit premises ?

Issue No.4 - Whether the defendant no.2 proves that late Rajaram Wagle, as the tenant of the suit premises, surrendered the same to him before his death?

It can, thus, be seen that the burden in respect of the aforesaid two issues lies on the defendants.

6. The parties led oral and documentary evidence. The plaintiff no.1 was examined as PW1 on 17/09/2005 and produced certain documents pertaining to grant of Excise Licences to defendant no.1, which are marked as

Exh.57 and Exh.B (Colly). Remaining documents pertaining to said Excise Licences were not produced.

The plaintiffs closed their leading case, reserving their right to lead evidence in rebuttal on issue nos.3 and 4 vide application Exh.67, which was allowed by the Trial Court on 25/04/2006.

7. In April, 2006, the defendants were allowed to produce certain documents, obtained by them under Right to Information Act (RTI Act), (which were subsequently certified as true copies), relating to the said Excise Licences. This production was allowed subject to proof and keeping the objections of the plaintiffs open.

Somewhere in December, 2006, the plaintiffs also obtained certain documents in relation to the Excise Licences under the RTI Act.

8. The defendants led their oral evidence, *inter alia*, by examining Ms. Amira Razak (DW1) and four other witnesses, including the Excise Inspector Durgesh Naik (DW3). The defendants closed their evidence on 19/06/2015. The suit was then kept for

evidence of the plaintiffs, in rebuttal.

9. On 01/07/2015, the plaintiffs filed an application under Order XVI, Rule 6 of the Code of Civil Procedure (CPC), for issuing summons to the Excise Department to produce the entire file pertaining to Excise Licences granted to the defendant no.1, which was rejected by the learned Trial Court on 10/07/2015. This was unsuccessfully challenged by the plaintiffs in W.P.No.562/2015, which was dismissed by this Court on 23/07/2015, with the following observations in paras 4 and 5 of the judgment :

"4. I have given my thoughtful consideration to the contentions of the learned Senior Counsel appearing for the petitioners. By the impugned order, the learned Judge has in fact noted that the petitioners can produce certified copies of the records of the concerned files. With regard to the contentions of Mr. Lotlikar, learned Senior Counsel appearing for the petitioners, that the records will be relevant to examine whether some new documents were introduced subsequently, I find that this aspect can be ascertained only after the petitioners produce the certified copies of the

documents from the concerned files, on which the petitioners rely. In case the Court finds any discrepancy with regard to the documents, and in case such aspect is material to decide the matter in controversy in the suit, it is open to the Court to direct the concerned Authority to produce the files in accordance with law.

5. Subject to the above, I find that no case is made out by the petitioners to entertain the petition under Article 227 of the Constitution. The petition stands, accordingly, rejected. However, liberty to the petitioners to challenge the impugned order in case any adverse order is passed against the petitioners at the time of final disposal of the suit on merits."

10. In July, 2015, the plaintiffs obtained another set of entire files pertaining to the Excise Licences under RTI Act.

The plaintiffs filed yet another application (Exh.193) for production of the said documents, which was rejected by the learned Trial Court on 31/08/2015. W.P.No.715/2015, challenging the said order, was dismissed by this Court on 30/10/2015.

11. In the aforesaid backdrop, it would now be

necessary to deal with the challenge in individual Writ Petitions.

W.P.No.239/2016

12. The plaintiffs filed an application Exh.110 purportedly under Order XIV, Rule 3 read with Section 151 of CPC, for "production and reliance on additional documents". In the prayer clause of the said application, reference is made to Order VII, Rule 14 read with Section 151 of CPC. By this application, the plaintiffs are seeking to produce files pertaining to Excise Licences and for this purpose, to issue summons to the Excise Department. There is an alternate prayer in the said application, which reads thus :

"In the event, this Hon'ble Court is disinclined towards production of the said two files in original, this Hon'ble Court be pleased to permit the defendants to produce on record the certified copies which they had obtained of the entire files, firstly, in the year 2006 and later in the year 2015, both the sets of documents obtained by the plaintiffs in the year 2006 as well in the year 2015,

are on record of this Hon'ble Court having been produced by the plaintiffs along with their application dated 1/8/2015."

13. This application was opposed by the defendants, *inter alia*, on the ground that it is hit by principles of *res judicata*, for which reliance is placed on the decision of the Hon'ble Supreme Court in the case of **Satyadhan Ghosal Vs. Deorajin Debi**; AIR 1960 SC 941.

The learned Trial Court has rejected this application by order dated 03/02/2016, which is subject matter of challenge in this petition.

W.P. No.241/2016

14. It may be mentioned that the defendant nos.2(iii), 2(iv) and 2(vi), who are daughters of original defendant no.2 Shri Abdul Razak (since deceased), had filed RCS No.577/2000/B (Old Special Civil Suit No.89/1998), claiming that the suit premises are allotted to them in Inventory Proceedings bearing No.80/1989/A. That suit was withdrawn on

06/01/2009.

The plaintiffs have filed an application Exh.202 purportedly under Order XI, Rule 14 of CPC, seeking production of following documents relating to RCS No.577/2000/B :

- (i) *Plaint.*
- (ii) *Written Statement.*
- (iii) *Additional Written Statement along with issues framed in the suit.*
- (iv) *Application for withdrawal of the suit and the order passed thereon, dismissing the suit as withdrawn.*

This application was opposed by the defendants, *inter alia*, on the ground that the documents are not relevant and were not produced earlier, even if the plaintiffs were in possession of the same.

The Trial Court has rejected this application by order dated 04/12/2015, which is subject matter of challenge in this petition.

W.P.No.242/2016

15. The plaintiffs have filed yet another application Exh.203, purportedly under Order XVI, Rule

2 of CPC, for issuing summons to the office of Commissioner of Excise to depute an official to depose along with the file in respect of two Excise Licences.

This application was opposed by the defendants, *inter alia*, on the ground that the plaintiffs have exhausted their right to lead evidence in rebuttal, the earlier applications filed by the plaintiffs on 01/07/2015 and 01/08/2015, having been rejected and which orders having attained finality. It was contended that the plaintiffs cannot be allowed to re-agitate the same, as it stands concluded.

The learned Trial Court has rejected the application (Exh.203) by order dated 04/12/2015 which is subject matter of challenge in this petition.

16. I have heard Shri Lotlikar, the learned Senior Counsel for the petitioners and Smt. Agni, the learned Senior Counsel appearing for the contesting respondents.

17. It is submitted by Shri Lotlikar, the learned Senior Counsel for the plaintiffs that the plaintiffs had reserved liberty to lead evidence in rebuttal on

issue nos.3 and 4. It is contended that the plaintiffs are only trying to lead such evidence, which is not permitted for extraneous and untenable reasons. The learned Senior Counsel was at pains to point out that there is material discrepancy as to the copies of two files pertaining to the Excise Licences, obtained in 2006 and 2015 by the plaintiffs and also the copies obtained and produced by the defendants. In particular, reference is made to the difference in the number of folios supplied each time and with reference to the fees charged. It is submitted that this clearly shows that there is tampering and manipulation of the record. He submits that all that the plaintiffs want is to produce the entire folios relating to the Excise Licences on record.

It is submitted that the applications were opposed only on two grounds namely, the said documents/ files not being put to the concerned witnesses in cross-examination and the same being hit on principles of *res judicata*. It is submitted that the production is refused on the ground that the documents are not relevant, though this ground was not raised. It is submitted that even otherwise, the

documents cannot be said to be not relevant to issue nos.3 and 4. It is submitted that the production of the entire files is necessary to show the serial numbers of the folios to demonstrate that there are alterations and manipulations and some of the documents are missing from the file. The learned Senior Counsel was at pains to point out that the documents sought to be produced are not "live files" as they are already disposed of. It is submitted that the production is necessary only to demonstrate the state of the file. The learned Senior Counsel pointed out that earlier rejection of the applications is not a ground/ reason given by the learned Trial Court. The learned Senior Counsel has referred to the provisions of Order XVIII, Rule 3 of CPC and Order VII, Rule 14 of CPC. It is submitted that the rejection of prayer earlier made for production of the documents cannot come in the way of the plaintiffs from seeking to produce the documents in rebuttal, when specifically leave was reserved and granted. The learned Senior Counsel submitted that the copies of the pleadings, applications and the order permitting withdrawal of Civil Suit No.577/2000/B filed by the

original defendant nos.2(iii), 2(iv) and 2(vi) are also relevant. The learned Senior Counsel has pointed out that these documents are in the nature of public documents and production of their certified copies can always be allowed.

18. On behalf of the plaintiffs, reliance is placed on the following decisions :

(i) **Smt. Taralakshmi Maneklal Thanawalla & Anr. Vs. Shantilal Makanji Dave and Ors;** 2015(6) ALL MR 62.

(ii) **Smt. Chitrakala Fal Dessai Vs. Shri Balu Marathe alias Mane s/o. Jyotiba Marathe;** 2006(5) ALL MR 438.

(iii) **Anil Kumar Chourasia Vs. Smt. Prabha Devi and Ors.;** AIR 2010 Jhar 115.

(iv) **Vencu Gopal Tari and others Vs. Nilconta S. Xete and others;** AIR 1975 Goa, Daman and Diu 32.

(v) **Biswanath Prasad and others Vs. Dwarka Prasad and others;** AIR 1974 SC 117.

19. On the contrary, it is submitted by Smt. Agni, the learned Senior Counsel for the contesting respondents, that twice similar applications filed by the plaintiffs have been rejected. The learned Senior Counsel has placed reliance on the decision in the

case of **Barkat Ali and another Vs. Badrinarain;** (2008)4 SCC 615, in order to submit that the principles of *res judicata* not only apply in respect of separate proceedings, but the general principles also apply at the subsequent stage of the same proceedings, the Court is precluded to go into that question again, which has been decided or deemed to have been decided by it at an earlier stage. The learned Senior Counsel has placed reliance on the decision of the Supreme Court in **Shalini Shyam Shetty and another vs. Rajendra Shankar Patil**, (2010)8 SCC 329, in order to submit that the jurisdiction under Article 227 of the Constitution of India is essentially limited and to keep the subordinate Courts and Tribunals within the bounds of their authority. The learned Senior Counsel has submitted that the impugned orders do not show any error of jurisdiction, requiring interference.

20. The learned Senior Counsel has pointed out that the evidence of the plaintiffs was closed as far back as on 31/01/2006 and the issues were settled in the year 2004. It is submitted that thus, the plaintiffs

cannot be permitted to go back at the stage envisaged in Order VII, Rule 14 of CPC, except in exceptional circumstances. It is submitted that the plaintiffs are interested in prolonging the suit and this is yet another attempt to gain time. The learned Senior Counsel has placed reliance on the decision in the case of ***M/s. Bagai Construction Vs. M/s. Gupta Building Material Store***; 2013 AIR SCW 1564, ***Union of India Vs. Ibrahim Uddin and another***; (2012)8 SCC 148 and ***Laxmibai through Lrs and another***; (2013)4 SCC 97.

21. In reply, it is submitted by the learned Senior Counsel for the plaintiffs that the plaintiffs are not asking for production of the record and only asking for examination of the witness from the office of the Commissioner of Excise and the witness may bring the file "for refreshing his memory". Reference is made to Order VII, Rule 14(4) of CPC, in order to submit that nothing in Order VII, Rule 14 shall apply to documents produced in the cross-examination of the plaintiffs' witnesses or handed over to the witness merely to refresh his memory. It is submitted that merely because DW3 was not cross-examined on the

aspect of manipulation/ tampering, an opportunity to lead evidence in rebuttal cannot be foreclosed.

22. In so far as W.P.No.241/2016 is concerned, it is submitted that the documents are public documents and admissions are admissible *proprio vigore*. The learned Senior Counsel tried to make out a distinction between the evidence of parties and the one by witness.

23. In so far as W.P.No.239/2016 is concerned, it is submitted that *res judicata* may not apply as the earlier rejection cannot come in the way of permitting the plaintiffs to lead evidence in rebuttal.

24. I have carefully considered the rival circumstances and the submission made.

25. Notwithstanding the extensive narration of facts, the issues involved are essentially limited. It is a matter of record that the primary burden in so far as issue nos.3 and 4 lies on the defendants. The plaintiffs have closed their leading case way back in

the year 2006 and have been permitted to lead evidence in rebuttal vide order dated 25/04/2006 below Exh.67. It is further a matter of record that the defendants have led their evidence including that of DW3 Durgesh Naik and Excise Inspector and they have closed their evidence on 19/06/2015. The suit has then been fixed for evidence in rebuttal of the plaintiffs. Thereafter, the plaintiffs had filed an application on 01/07/2015 under Order XVI Rule 6 of CPC. Order XVI pertains to summoning and attendance of witnesses and Rule 6 thereof pertains to summons to produce documents. It envisages that any person may be summoned to produce a document without being summoned to give evidence and any person summoned merely to produce document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same. It can, thus, be seen that in the said application dated 01/07/2015, the plaintiffs had sought production of the files pertaining to Excise Licences, which was rejected by the Trial Court on 10/07/2015 and confirmed by this Court in W.P.No.562/2015. This Court, in paras 4 and 5 of the judgment as reproduced

above, has noted that the learned Trial Court had found that the plaintiffs can produce the certified copies of the records of the concerned files. This Court further found that the question whether some new documents were introduced subsequently, can be ascertained only after the plaintiffs produce the certified copies of documents of the concerned file, on which the plaintiffs relied and in case the Court finds any discrepancy with regard to documents and in case such aspect is material to decide the controversy in the suit, it is open to the Court to direct the concerned authorities to produce the files in accordance with law. With this, the petition was dismissed.

26. The plaintiffs filed yet another application, which was dismissed on 31/08/2015 and that order was confirmed by this Court in W.P.No.715/2015. In such background, it has to be seen whether similar request could have been permitted in respect of production of the files pertaining to the two Excise Licences.

27. In so far as W.P.No.239/2016 is concerned, the

plaintiffs had filed an application Exh.110 purportedly under Order XIV Rule 3 read with Section 151 of CPC while in the prayer clause, reference is made to Order VII, Rule 14 read with Section 151 of CPC. It would be significant to see whether such a prayer can lie under any of these provisions. Order XIV pertains to settlement of issues and determination of suits on issues of law and issues agreed upon. Rule 3 provides for the materials from which issues may be framed. Order VII pertains to provisions as regards plaint. Rule 14 thereof provides for production of documents, on which the plaintiffs sue or relies. Order VII, Rule 14 reads thus :

"14. Documents relied on in Plaint.-

Production of document on which plaintiff sues or relies

(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such documents not in the

possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to document produced for the cross examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory."

28. It can, thus, be seen that Order VII, Rule 14 envisages production of the documents (where the plaint is based on such documents) and which are in possession or power of the plaintiff. If the plaintiff is not in possession of such document on which he sues, he shall state in whose possession or power the document is, wherever possible. Subrule (3) of Rule 14 of Order VII then provides for a document, which ought to be produced in the Court by the

plaintiff when the plaint is presented, if not produced, shall not without the leave of the Court, be received in evidence on his behalf at the hearing of the suit. Subrule (4) of Rule 14 of Order VII then provides that nothing in this rule shall apply to documents for the cross-examination of the plaintiff's witnesses or handed over to a witness merely to refresh his memory. It can, thus, be seen that Rule 14 of Order VII pertains to production of documents on which "the plaintiff sues", at the threshold and nothing in rule 14 applies to the documents produced for cross-examination of the "plaintiff's witness" or handed over to witness merely to refresh his memory. In the present case, the documents, which are sought to be produced are neither documents which the plaintiff sues upon, nor are sought to be produced for the cross-examination of the plaintiffs' witness or any other witness, in as much as the leading evidence of the plaintiffs and evidence of the defendants is already closed and the matter is at the stage of leading of evidence in rebuttal by the plaintiffs. Thus, in my considered view, neither the provisions of Order XIV Rule 3 nor Order VII, Rule 14 of CPC can be

called into aid in this case. I am conscious of the fact that mere wrong mentioning of the provisions may not be decisive. However, it is not shown that such application can be entertained under any other provision.

29. A perusal of the impugned order passed by the Trial Court would show that the Trial Court has considered the case of the plaintiffs in respect of the prayer for production of two files extensively and has ultimately found that the plaintiffs have not stated about the relevancy of each of the documents contained in the files. According to the Trial Court, this assumes importance as some of the documents are already produced by PW1 and in order to rebut the same, DW1 has produced some other documents, which were subsequently compared with the originals produced by Excise Inspector (DW3). The learned Trial Court has found that although the plaintiffs have contended that the necessity of production of documents has arisen after the cross-examination of DW1 and DW3, there is no dispute that the certified copies of files were available with the plaintiffs when both the

witnesses were cross-examined by them and at that stage, no attempt was made to produce the documents from the file or to bring the alleged manipulation on record. The Trial Court has further went on to observe that the placement of the documents in Government Department is not within the control of the parties and "not governed by any rules." It has been further found that the evidence of DW3 clearly shows that the documents brought by him in the Court were removed from the original file and hence, the placement of the documents in the original file is not relevant to show that the documents are manipulated. In that view of the matter, the application has been rejected.

30. In so far as W.P.No.242/2016 is concerned, the application Exh.203 is filed by the plaintiffs purportedly under Order XVI, Rule 2 of CPC, which provides for expenses of a witness to be paid into Court. It may be mentioned that the earlier application filed by the plaintiffs under Order XVI, Rule 6 was rejected by the Trial Court and has been confirmed by this Court, granting liberty to the

plaintiffs to produce the certified copies, which are in their possession and which can, then, be compared by the learned Trial Court in order to find out whether some new documents have been introduced subsequently. The learned Trial Court has dismissed this application on the ground that earlier, production of the documents and the files was not allowed and the plaintiffs have failed to explain the relevancy of the said documents and the present application is only an attempt to scuttle the earlier order passed by this Court, by taking a backdoor entry and to bring on record the evidence, which is not relevant in so far as the rebuttal of issue nos.3 and 4 is concerned.

31. The plaintiffs had filed yet another application for production of the said documents, which was rejected by the Trial Court on 31/08/2015, which has been confirmed by this Court. In my considered view, the plaintiffs are only trying to make similar request by taking recourse to provisions, which are not applicable. In any event, the prayer cannot be granted in view of the fact that similar

such requests have been earlier rejected, which orders have attained finality.

32. It would be significant to note that both these applications, filed on 01/07/2015 and 01/08/2015 have been filed after the suit was fixed for evidence in rebuttal. The submission that the Trial Court has rejected the application on the ground that the documents are not shown to be relevant when no such contention was raised, also cannot be accepted. Merely because the party does not raise an objection as to the relevancy of documents, would not preclude the Court from examining the question as the relevancy of document goes to the very root of the matter while deciding whether production of the documents is to be allowed.

33. This takes me to W.P.No.241/2016. As noticed earlier, the original defendant nos.2(iii), 2(iv) and 2(vi) i.e. the daughters of the original defendant no.2 Abdul Razak (since deceased), had filed RCS No.577/2000/B, claiming that the suit premises are allotted to them in Inventory Proceedings bearing

No.80/1989/A, which suit has been withdrawn on 06/01/2009. In the first place, it is difficult to envisage as to how the copies of the plaint, written statement/ additional written statement along with issues framed and the application for withdrawal and order passed thereon, would be relevant in so far as rebuttal evidence on issue nos.3 and 4 is concerned. Issue no.3 pertains to the case set up by the defendant no.1 that he was inducted by now deceased Abdul Razak in the suit premises somewhere in the year 1990, while issue no.4 pertains to the case set up by the defendant no.2 that late Rajaram Wagle, as the tenant of the suit premises, had surrendered the tenancy rights prior to his death in the year 1981. The learned Trial Court in para 24 of the impugned order has found that the plaintiffs have failed to explain relevance of these documents and at this stage, cannot be allowed to produce the same, which will result in reopening of their case, which was closed way back in the year 2006. In para 25 of the impugned order, the learned Trial Court has found that the Inventory Proceedings are produced on record and it is not in dispute that the defendants are brought

on record pursuant to the death of defendant no.2 as his legal heirs. The Trial Court has ultimately found that the plaintiffs cannot be allowed to produce additional documents without explaining the relevance of the same and that too after a period of 10 years, when the matter has reached the stage of evidence in rebuttal. I do not find that any exception can be taken to the impugned order as passed.

34. In the case of **Taralakshmi Thanawalla** (supra), it has been held that wherever in the matter of assessment of the evidence, the Court has not been alive to the legal position, or has applied incorrect tests or rather failed to apply the correct tests, then, the resultant decision is capable of being corrected by a writ of *certiorari*. In the present case, the only question is about production of certain documents and not appreciation of any evidence. Even while rejecting the application for production of documents, it has not been shown that any incorrect test has been applied.

35. In the case of **Chitrakala Phaldessai** (supra),

it has been held with reference to Order VII, Rule 14(3) and Order XIII Rule 2 that the Courts should not generally deny leave to produce documents, because ultimately it is always open to the other side to cross-examine the party, who produces the document to establish that the said documents are not relevant or that the case based on said documents is not true.

The present applications filed by the plaintiffs are not relatable to Order VII, Rule 14 of CPC. As noticed earlier, Order VII Rule 14 pertains to the documents, which are to be produced along with the plaint and on which the plaintiff sues or relies. Order XIII pertains to production, impounding and return of documents. Rules 1 and 2 of Order XIII have been substituted with Rule 1 of Order XIII, which reads as under :

"1. Original documents to be produced at or before the settlement of issues.- (1)

The parties or their pleader shall produce on or before the settlement of issues, all the documentary evidence in original where the copies thereof have been filed along with the plaint or written statement.

(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.

(3) Nothing in sub-rule (1) shall apply to documents—

(a) produced for the cross-examination of the witnesses of the other party; or

(b) handed over to a witness merely to refresh his memory.”

In the present case, the plaintiffs have not shown any reason for non-production of the documents earlier and that apart similar request, made earlier twice, has already been rejected.

37. The decision of Jharkhand of High Court in the case of **Anil Chourasiya** (supra) again pertains to Order VII, Rule 14 of CPC.

38. The decision in the case of **Vencu Gopal Tari** (supra), is again distinguishable on facts, in which there was a dispute as to the identity of the suit property allegedly bearing two different registration

numbers and the impugned judgment was found to be brief and laconic.

39. Lastly, in the case of **Biswanath Prasad** (supra), the distinction between admission made by a party to the suit and the witness, is brought about with reference to Sections 21 and 145 of the Evidence Act.

40. It is now well settled that the scope of interference under Article 227 of the Constitution of India, is essentially limited and such jurisdiction is expected to be exercised to keep the subordinate Courts and Tribunals within the bounds of their authority. (See the judgment in the case of **Shalini Shyam Shetty** (supra)). Even in the case of **Abdul Razak Vs. Manguesh Rajaram Wagle**; (2010)2 SCC 432 (which has arisen out of the same suit), it has been held that writ of *certiorari* or exercise of supervisory jurisdiction is not available to correct mere errors of facts or of law unless the following requirements are satisfied namely, (i) the error is manifest and apparent on the face of proceedings such as when it is

based on clear ignorance or utter disregard of the provisions of law; (ii) a grave injustice or gross failure of justice has occasioned thereby. It has been held that such supervisory jurisdiction is to be exercised sparingly and only in appropriate cases, in order to avoid a gross failure of justice or cases which show manifest injustice being caused. Applying these principles, I do not find that any case for interference is made out.

41. In the result, Writ Petitions are dismissed, with no order as to costs.

C. V. BHADANG, J.

SMA