

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 2167 OF 2016

NARAYAN LAXMAN DHURI
AND ORS.

...Petitioners

Versus

DATTARAM ARJUN DHURI
AND ORS.

...Respondents

....

Mr.Sachin S. Punde, Advocate for the Petitioners.

Mr. Aniket P. Ranade, Advocate for respondent Nos.1, 2/2, 3, 4 & 5.

....

CORAM : R. G. KETKAR, J.

DATE : 22nd MARCH, 2016

P.C.

1. Heard Mr. Sachin Punde, learned Counsel for the petitioners and Mr. Aniket Ranade, learned Counsel for respondent Nos.1, 2/2, 3, 4 & 5, at length.
2. Rule. Mr. Ranade waives service on behalf of the respondents. At the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing.
3. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the judgment and order dated 31.12.2015 passed by the learned Civil Judge, Junior

Division, Rajapur below Exhibit-181 in R.C.S. No.7/2001. By that order, the learned trial Judge rejected the application made by the petitioners, hereinafter referred to as the 'plaintiffs' for leading evidence of the person who translated document at Exhibit-94 which is in *modi* script in *Devnagari*, as also leading the evidence of the person who translated the document at Exhibit-108 which is in *Moddi* script in Devnagari.

4. Mr. Punde invited my attention to (1) paragraph-2B and 2C of the amended plaint, and (2) affidavit in examination-in-chief of plaintiff No.3 Deu Atmaram Dhuri and in particular paragraphs-4, 5 & 12 thereof. He submitted that the panchnama dated 17.3.1946 in *moddi* script was marked as Exhibit-94. Application dated 21.2.1946 made by Atmaram Ganu Dhuri and others before the learned Judicial Magistrate First Class, Rajapur was marked as Exhibit-108. He submitted that as the documents at Exhibit-94 and Exhibit-108 are in *moddi* script, the plaintiffs filed application Exhibit-181 for examining the translators of Exhibits-94 and 108. By the impugned order, the learned trial Judge rejected the application on the ground that the plaintiffs have not proved nexus of the documents with the

suit as also the application is filed to fill up the lacuna. He submitted that the documents are referred in the plaint as also in the evidence and, therefore, the learned trial Judge ought to have allowed the application.

5. On the other hand, Mr.Ranade supported the impugned order. He has invited my attention to cross-examination of the plaintiff No.3 and in particular paragraph-18 thereof relating to the panchnama dated 17.3.1946 which is marked at Exhibit-94. He therefore submitted that as far as panchnama Exhibit-94 is concerned, the plaintiff should not be given liberty to examine the translator so as to fill up the lacuna in the evidence. As far as application dated 21.2.1946 made by Atmaram Ganu Dhuri and others is concerned, he submitted that the plaintiffs have merely referred to this document in paragraph-15 of the affidavit in examination-in-chief. In other words, he submitted that the plaintiffs have not proved the contents thereof.

6. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record.

7. As far as panchnama dated 17.3.1946 at Exhibit-94 is concerned, the plaintiffs have referred to this document in paragraph-14 of the affidavit in examination-in-chief and was cross-examined by the defendants as is evident from paragraph-18. In view thereof, I do not think it appropriate to permit the plaintiffs to lead evidence in respect of panchnama at Exhibit-94. As far as application dated 21.2.1946 at Exhibit-108 is concerned, perusal of examination-in-chief shows that the plaintiff has made reference to the said document. However, the plaintiff has not proved the contents thereof.

8. In view thereof, the plaintiffs are permitted to lead evidence only in respect of application dated 21.2.1946 at Exhibit-108 to prove its contents subject to rights of the defendant to cross-examine the witness of the plaintiffs on that point. Mr. Punde assures that plaintiff No.1 will appear in the trial Court on 29.3.2016 to prove the contents of the application dated 21.2.1946 at Exhibit-108. Mr. Ranade states that the defendants will cross-examine plaintiff No.1 on this aspect.

9. In view thereof, the learned trial Judge will permit plaintiff No.1 to prove the contents of Exhibit-108, on 29.3.2016

as also permit the defendants to cross-examine him on that point alone. Subject to this clarification, no case is made out for interfering with the impugned order. After completing the evidence, the learned trial Judge will proceed with the suit from the stage at which it was kept in abeyance. Rule is partly made absolute with no order as to costs.

10. All parties concerned, including the trial Court, to act upon authenticated copy of this order.

(R. G. KETKAR, J.)

Deshmane (PS)