

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 8251 OF 2016

Gulabrao Vinayak Deshmukh & ors. ... Petitioners

v/s

State of Maharashtra & ors. ... Respondents

Mr.Sagar Kasar for the petitioners.

Mr.S.D.Rayrikar, A.G.P. for Resp. Nos.1 to 3.

Mr.Abhijeet Joshi along with Pooja Joshi for Resp. Nos.4, 6, 7a, 7c, 7d and 7e.

Coram: N.M. Jamdar, J.

Dated: 6 October 2016

ORAL ORDER:

Heard learned counsel for the parties.

2 Considering the nature of the impugned order, the petition is taken up for final disposal.

3 By the impugned order dated 27 January 2016, the learned Civil Judge, Senior Division, Malegaon, has rejected the application taken out by the Petitioners, below Exh.128 in Regular Civil Suit

No.315 of 2014.

4 The learned Civil Judge held that, as far as the documents i.e. Articles A and B are concerned, the provision of Section 90 of the Indian Evidence Act cannot be made applicable. Thereafter the learned Civil Judge considered the prayer of the Petitioners for leading secondary evidence. This application was rejected on two grounds that, such an application was not made at the earlier stage of the proceedings and the Court has already considered the documents and numbered them as articles, there is no question of granting permission to the Petitioners/Plaintiffs to lead secondary evidence.

5 Learned counsel for the Respondent Nos.4 to 7 submitted that the Petitioners could have moved the application at an earlier stage and the learned Judge is right in rejecting the application by passing the impugned order. It is not impermissible for the Civil Court to consider the application for leading secondary evidence, even in a subsequent stage in the suit. Therefore, only because the permission was not sought earlier, the application could not have been rejected without giving any reasons as to whether the Petitioners gained from such delay and what would be the prejudice to the Defendants. The second ground given is only a sequator to the observations that the documents are marked as articles. Therefore, once an application for leading secondary evidence could be filed at a subsequent stage in the suit, it should have been considered by the learned Judge on merits.

The learned Civil Judge has not considered the application for the secondary evidence on merits as stated above and, therefore, the impugned order dated 27 January 2016 will have to be quashed and set aside and the application below Exh.128 is restored to the file of the learned Civil Judge, Senior Division, Malegaon, for consideration of the prayer regarding leading secondary evidence. The learned Civil Judge will decide this prayer on its own merits after giving liberty to both sides.

6 The writ petition is disposed of in the above terms.

(N. M. Jamdar, J.)