

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

WRIT PETITION NO. 7248 OF 2016

1. Shivaji Shankar Upari and Anr. ..Petitioners.

Vs

Balu Dattu Sangale .. Respondent

Mr. Chjetan G. Patil, Advocate for Petitioners.

Mr. Tejesh Dande i/b Tejesh Dande and Associates , Advocates for Respondent.

**CORAM : R.G.KETKAR,J.
DATE : 19/12/2016**

PC:

1. Heard Mr.Chetan Patil, learned counsel for the petitioners and Mr.Tejesh Dande, learned counsel for the respondent at length. Rule. Mr.Dande waives service for the respondent. In view of narrow controversy raised in the petition as also at the request and by consent of the parties, Rule is made returnable forthwith and petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as 'plaintiffs', have challenged the order dated 8.3.2016 passed by the learned Civil Judge, Jr. Dn, Panhala below Exhibit 64 in Regular Civil Suit No.20 of 2010. By that order, the learned trial Judge rejected the application made by the plaintiffs for production of (1) decree passed by the Joint High Court of Judicature for Kolhapur in Second Appeal No. 59 of 1946.

3. In support of this petition, Mr. Patil invited my attention to paragraph 3 of the plaint wherein reference was made to the decision of the High Court at Kolhapur as also compromise entered into between the parties therein on 25.4.1946.

4. Mr. Patil submitted that though reference was specifically made in paragraph 3 of the plaint, the decree passed in Second Appeal No. 59 of 1946 could not be produced as the said document was not traceable. The plaintiffs, therefore, took out application Exhibit-64 for production of decree on that ground. By the impugned order, the learned trial Judge rejected the application mainly on the ground that the application is filed after completion of the plaintiffs' evidence. The plaintiffs have not explained as to why they have not produced this document during their evidence. It was not referred in the cross examination of the defendant. The learned trial Judge was of the view that production of the document at this stage was not proper. Mr. Patil submitted that the plaintiffs may be permitted to produce the decree passed in Second Appeal No. 59 of 1946 subject to proof of its contents.

5. Mr. Dande supported the impugned order. He submitted that the suit is instituted in the year 2010. Present application is made on 24.4.2015. He has taken me through that application to contend that the said application does not give any cogent reason for not producing the decree. The said application is

bereft of particulars and, therefore, no case is made out for production of decree.

6. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. It appears that Second Appeal No. 59 of 1946 was instituted in the Joint High Court of Judicature for Kolhapur by Dadu Yesu Upari, being appellant-defendant challenging the decision passed in Appeal by the learned District Judge, Kolhapur. The said Appeal was preferred against Soudagar Bala Sangale. The respondent-plaintiff had instituted suit for declaration that he was entitled to the week of worship and to receive the emoluments in Shree Jotiba's temple. The plaintiffs also sought declaration that the defendant who pretends to be the adopted son of his grand-mother Balabai, be declared illegal. The learned trial Judge dismissed the suit. The learned District Judge reversed the order of the learned trial Judge thereby decreeing the suit. The defendant preferred Second Appeal which was dismissed on 18.4.1946.

7. Plaintiffs have specifically made reference to the litigation in the Joint High Court of Judicature for Kolhapur in paragraph 3 of the plaint. It is their further case that the Second Appeal was compromised and accordingly the compromise decree was passed on 25.4.1946.

8. As reference is already made in paragraph 3, in my

opinion, the learned trial Judge should have permitted production of the decree subject to proof of contents thereof. It is not as if the defendant is taken by surprise by production of this document. The defendant will be entitled to cross examine the plaintiffs as regards this document. Hence the following order.

(i) Impugned order is set aside and Application Exhibit-64 is allowed. The plaintiffs shall prove the contents of the compromise decree and the defendant will be entitled to cross examine the plaintiff's evidence in that regard.

(ii) Rule is made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)