

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7710 OF 2015**

1.Ramchandra Arjun Phulsunder ..Petitioners
and Anr.

Vs

Mrs. Satyasheela Bharat Yadav .. Respondent

Mr. Surel S. Shah, Advocate for Petitioners.

CORAM : R.G.KETKAR,J.

DATE : 14/01/2016

PC:

1. Heard Mr. Surel Shah, learned counsel for the petitioners at length.

2. By this Petition under Article 227 of the Constitution of India, original defendants have challenged the judgment and order dated 6.2.2015 passed by the learned 2nd Jt. Civil Judge, Jr. Dn., Indapur below Exh.110 in Regular Civil Suit No.193 of 2007. By that order, the learned trial Judge rejected the application made by the petitioners, hereinafter referred to as 'defendants', for issuance of summons to concerned Officer of Zilla Parishad School Vadgaon (Siddheshwar), Tq.& District Usmanabad.

3. Mr. Shah submits that respondent, hereinafter referred to as 'plaintiff', instituted suit for partition and separate possession of her half share in Gat no.267/B. He submitted that the plaintiff claims to be daughter of Vasant Arjun Fulsunder, who is cousin of

defendants. In order to substantiate this fact, she examined Rohidas Bhagwan Zende, Head Master of Zilla Parishd, Vadgaon (Siddheshwar) School as PW 4 at Exhibit 76. PW 4 deposed that the plaintiff was born on 20.11.1966 and was admitted in that school on 20.10.1976. The defendants cross examined him. During the course of cross examination, he admitted that while admitting the plaintiff, affidavit was taken. However, he could not disclose as to who had made that affidavit. He further admitted that the signature of affiant or person who filled in form no.1 was not obtained.

4. Mr. Shah submitted that in view thereof, the defendant made application, inter alia, contending that the entry made in the school record is false and to establish that it is necessary to produce the documents on the basis of which entry in the register was made. The defendants, therefore, applied for issuance of witness summons to the concerned officer of Zilla Parishad School, Vadgaon.

5. Mr Shah submitted that basically the case of the defendant is that the plaintiff is not daughter of Vasant who is cousin of the defendant and in order to falsify her case, it is necessary to bring documents on the basis of which the entry relied by the plaintiff was made. The learned trial Judge, however, rejected the application on the ground that PW 4 was cross-examined by the

defendant at length and that in the list of witnesses, the defendants did not mention the name of officer of Zilla Parishad School.

6. As noted earlier, the plaintiff has instituted suit against the defendants for partition and separate possession. In paragraph 1 of the plaint she has given genealogy. The defendants have disputed that the plaintiff is daughter of Vasant, cousin of defendants. In order to substantiate her claim, she examined Rohidas Zende, Head Maser of the concerned school at Exhibit-76. He deposed that the plaintiff is born on 20.11.1966 as per school record and she was admitted in the school on 20.10.1976. Perusal of his evidence shows that the defendants have cross examined this witness. The question is whether the application made by the defendants for issuance of witness summons was rightly rejected by the learned trial Judge or not.

7. Perusal of the application shows that the defendants want to establish that the entry made in 1976 is false and the documents on the basis of which the said entry was made are required to be produced by issuing witness summons. In my opinion, the learned trial Judge rightly rejected the application on the ground that the defendants have cross examined PW 4 at length. That apart, as noted earlier, in the school record the date of birth of the plaintiff is recorded as on 20.11.1966. She was

admitted in the school on 20.10.1976. The evidence of PW 4 was recorded in the year 2013. It is highly doubtful whether after passage of nearly 40 years, the record is still preserved by the concerned school. In view thereof also, I do not find that any case is made out for interfering in the impugned order. Hence, Petition fails and the same is dismissed.

8. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the Memorandum of Appeal as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)