

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

WRIT PETITION NO. 8489 OF 2016

Smt. Sushila Jaywant Chikane
and Ors.

..Petitioners.

Vs

Shri Udaychandra Sitaram
Tambe

.. Respondent

Mr. Pandit Kasar , Advocate for Petitioners.

CORAM : R.G.KETKAR,J.
DATE : 05/08/2016

PC:

1. Heard Mr.Pandit Kasar, learned counsel for the petitioners at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the Judgment and order dated 28.4.2016 passed by the learned Ad-hoc District Judge, Pune below Exhibit-62 in Civil Appeal No. 292 of 2015. By that order, the learned District Judge rejected the application made by the petitioners seeking permission to examine witnesses.
3. In support of this petition, Mr. Kasar submitted that the petitioners took out application Exh.29 under Order 41, Rule 27 of C.P.C for production of following documents:-
 - (i) Record of tax assessment and collection of Pune Municipal Corporation which includes list of tenants of Tambewada;

- (ii) Order passed in Civil Revision No.20 of 2014;
- (iii) Photographs of petitioners' mezzanine floor;
- (iv) Rough sketch of room in possession of respondent and other rooms in Tambewada.

4. That application was allowed on 4.1.2016 by the learned District Judge. The petitioners, therefore, took out application Exh.62 seeking permission to examine witnesses in support of the documents which were allowed to be produced by order dated 4.1.2016. By the impugned order, the learned District Judge rejected the application. He submitted that the petitioners want to lead evidence in respect of the record of assessment and collection of taxes maintained by the Corporation as also eight photographs of mezzanine floor of the petitioners. If oral evidence is not adduced to prove these documents, the respondent will challenge these documents at the time of final hearing of the appeal. He, therefore, submitted that the learned District Judge should have allowed the application Exhibit-62 thereby permitting the petitioners to adduce evidence to prove these documents.

5. By the impugned order, the learned District Judge rejected the application by observing that as far as the document at sr. no.1, namely, record of assessment and collection of taxes of the Corporation is concerned, that is prepared by public officer in

discharge of his official duty. That apart, there is no dispute about factual aspects. As far as the photographs in respect of mezzanine floor is concerned, the Appellate Court observed that the respondent has not challenged the genuineness of photographs placed on behalf of the petitioners. Learned District Judge, therefore, held that there is no necessity to adduce oral evidence.

6. After hearing Mr. Kasar and in view of the reasons recorded in paragraph 2 of the impugned order, I do not find that the learned District Judge committed any error in passing the impugned order. Hence, petition fails and the same is dismissed.

7. It is, however, expressly made clear that where a decree is appealed from by the petitioners, 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.)