

IN THE HIGH COURT OF JUDICATURE AT MUMBAI  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.11970 OF 2015

Mohammad Shamim Abdul Sattar Sonawala and others... Petitioners  
Vs.  
Mohammad Husain Kasambhai Tanboli and others ... Respondent

Mr. Sagar V. Kasar i/b. Mr. Amol D. Wagh for Petitioners.

**CORAM : R. G. KETKAR, J.**  
**DATE : JANUARY 20, 2016**

**P.C. :**

Not on Board. At the request of Mr. Kasar, learned Counsel for petitioners, taken up for admission.

2. By this Petition under Article 227 of the Constitution of India, petitioners, hereinafter referred to as original plaintiffs, have challenged the order dated 23.07.2015 below exhibit-200 and order dated 20.08.2015 below exhibit-211 in Regular Civil Suit No.8 of 1998 passed by the learned Civil Judge, Junior Division, Manmad. By order dated 23.07.2015, the learned trial Judge rejected the application exhibit-200 made by the plaintiffs for issuing witness summons to one Ramdas B. Aher on the ground that on 14.03.2008, during the course of recording evidence of witness Rajendra Mahajan, he deposed that the original document is with Mr. Ramdas B. Aher. By application exhibit-211, plaintiffs prayed for issuing witness summons to Advocate Dinanath R. Yadav on the ground that the witness summons was issued to Shiv Prasad Dubey, stamp vendor and the same returned with the endorsement that 'he is expired'. Advocate Dinanath R. Yadav is looking after the work of said Shiv Prasad Dubey and therefore, summons may be issued to Mr. Yadav for producing the relevant register and other record.

3. Application exhibit-200 was rejected on the ground that though in

the application, plaintiffs contended that during the course of evidence, Mr. Rajendra Mahajan deposed that he has handed over original document to Ramdas Aher, perusal of the evidence of Mr. Mahajan shows that nowhere he deposed that he had handed over original document to Mr. Ramdas Aher. Mr. Kasar was not in a position to point out that the finding recorded by the learned trial Judge is contrary to evidence of Mr. Mahajan. In view thereof, I do not find that any case is made out for invocation of powers under Article 227 of the Constitution of India, more so when this Court had directed the trial Court to dispose of it in a time bound manner.

4. As far as order dated 20.08.2015 below exhibit-211 is concerned, the learned trial Judge rejected the application on the ground that though plaintiffs have sought issuance of witness summons to Advocate Yadav, they have not disclosed, on what basis, they have made statement that Advocate Yadav is looking after the work of Shiv Prasad Dubey, and therefore, the request made by the plaintiffs is not proper. I have perused the application dated 24.07.2015 made by the plaintiffs and I do not find that the learned trial Judge committed any error in recording finding to the effect that plaintiffs have not disclosed that on what basis they are contending that Advocate Yadav is looking after the work of stamp vendor Shiv Prasad Dubey. Hence, no case is made out for interfering with the order dated 20.08.2015. Petition fails and the same is dismissed.

5. However, it is made clear that where a decree is challenged by the petitioner, any error, defect or irregularity in the impugned orders, 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) C.P.C.

**(R. G. KETKAR, J.)**