

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.3593 OF 2015

PETITIONER :- Madhavlal S/o Narayanlal Pittie
Aged about 85 years, receiver in
Bombay High Court Suit No.
224/1961 having its office at C/o
Harinagar Sugar Mills Centre-1,
World Trade Centre, Cuffe
Parade, Mumbai-400005 through
his power of attorney holder Mr.
Jaishankar S/o Awadhnarayan
Tiwari, aged about 52 years, Occupation :
Service, R/o 15/25, Man Nagar,
Bandra-East, Mumbai

...VERSUS...

RESPONDENTS :-

- 1) M/s.Aman Timber Mart
- 2) Khan Saw Mill, a partnership Firm
- 3) Aman Saw Mill Partnership Firm
- 4) Amamullakhan S/o Alafkhan
- 5) Abidullahan S/o Alafkhan
- 6) Attaullahan S/o Alafkhan
- 7) Shadat Shadullakhan S/o Alafkhan
- 8) Moon Engineering Fabrication
Work, through Abidullakhan
S/o Amankhan, All R/o Gin File,
Church Road, Yavatmal, Tahsil &
District Yavatmal.

Mr.J.J. Chandurkar, counsel for the petitioner.
Mr.N.B. Bargat, counsel for the respondent Nos.4 to 7.

CORAM : SMT. VASANTI A. NAIK J.

DATED : APRIL 02, 2016.

ORAL JUDGMENT

Rule. Rule made returnable forthwith. The petition is heard finally with the consent of the learned counsel for the parties.

By this petition, the petitioner has challenged the order of the Civil Judge Junior Division, Yavatmal dated 2.5.2015 in Small Cause Suit No.21 of 2008 rejecting the application filed by the petitioner for calling the original records in Civil Suit Nos.39 of 1994 and 93 of 1982 for proving his case.

The petitioner is the original plaintiff. A suit was filed by the petitioner against the respondent for eviction and possession, bearing Small Cause Suit No.21 of 2008. Proceedings between the same parties were also decided by the Civil Court in Civil Suit Nos.39 of 1994 and 93 of 1982. In the instant suit filed by the petitioner, the petitioner has sought the eviction of the respondent, who according to the petitioner, is the tenant in the suit property. In the present suit filed by the petitioner, the respondent-defendant has raised a plea that he is the owner of the suit property. At the time of tendering of evidence, the

petitioner-plaintiff made an application before the Small Causes Court for calling the original record and proceedings in Civil Suit Nos.39 of 1994 and 93 of 1982 to show that the respondent-defendant had taken a contrary plea in the earlier suits. It is the case of the petitioner-plaintiff that in the two earlier suits between the parties, the respondent had raised a plea that he is the tenant in the suit property, whereas in the present suit, the respondent had claimed the ownership and title to the suit property. With a view to prove the contradiction in respect of a material fact, the petitioner had sought the necessary order for calling for the original records in the aforesaid two suits. The application was, however, rejected by the impugned order dated 2.5.2015.

Shri Chandurkar, the learned counsel for the petitioner submits that the application made by the petitioner could not have been rejected by referring to the provisions of Section 157 of the Evidence Act. It is submitted that admittedly, the record and proceedings in Civil Suit Nos.39 of 1994 and 93 of 1982 is available in the Court and, therefore, the same could have been directed to be produced in the small causes suit to prove a material contradiction in the plea raised by the respondent-defendant in the earlier suits and the present suit. It is submitted that after the records of the civil suits could have been secured, the petitioner would have taken appropriate steps to prove the

same. It is submitted that the application made by the petitioner could not have been rejected at the threshold by referring to the provisions of Section 157 of the Evidence Act.

Shri Bargat, the learned counsel for the respondent supported the order of the Small Causes Court and sought for the dismissal of the writ petition.

On hearing the learned counsel for the parties, it appears that the Small Causes Court has committed a serious error in rejecting the application filed by the petitioner by referring to the provisions of Section 157 of the Evidence Act. The petitioner could have proved the statements in the record by resorting to the provisions of the Evidence Act after the same would have been secured by the Small Causes Court. The record and proceedings in the two decided suits between the same parties may have been considered by the Small Causes Court after calling for the same in accordance with law. The Small Causes Court wrongly made a reference to the provisions of Section 157 of the Evidence Act for rejecting the application filed by the petitioner. There is nothing in the said provision that prohibits the Small Causes Court from calling the record and proceedings in the matter decided by the Trial Court between the same parties.

Hence, for the reasons aforesaid, the writ petition is allowed. The impugned order is quashed and set aside. The application filed by the petitioner for the calling of the record, at Exh.121 is allowed.

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

At the request of the learned counsel for the petitioner, the proceedings in the suit are expedited.

JUDGE

!! BRW !!`