

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3367 OF 2017

VENKATRAO RANGRAO PATIL AND OTHERS
VERSUS
MALLIKARJUN SANGRAM PATIL

...
Advocate for Petitioners : Mr. Gunale Prakash G.
Advocate for Respondents : Mr. Dr. S.D. Tawshikar
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CORAM : V. K. JADHAV, J.
DATED : 28th NOVEMBER, 2017

PER COURT:-

1. Being aggrieved by the order dated 7.12.2016 passed below Exh.70 in R.C.S. No. 42 of 2009 the petitioners-original defendants approached this court by filing present writ petition.

2. It appears that the respondent-plaintiff has filed said application Exh.70 contending therein that wrong map has been shown to P.W.2 in his examination before the court by counsel appearing for the respondent-plaintiff and as such, the map prepared by P.W.2 remained to be exhibited and different map has been exhibited by the court. Respondent-plaintiff has filed an application for recalling the said P.W.2 only to the limited extent to exhibit the map and nothing more than that.

3. Learned counsel for the petitioners submits that the trial court

has passed order by invoking the inherent powers under section 151 of C.P.C. without following specific provisions in this regard as contemplated in Order XVIII Rule 17 of C.P.C. It is for the Court to recall and examine the witness in case contingency so arises and such powers are intended to be used sparingly.

Learned counsel for the petitioners has placed reliance on the following judgments:-

- i) Vadiraj Nagappa Vernekar vs. Sharadchandra Prabhakar Gogate, reported in 2009 (5) Mh.L.J. 142,
- ii) Durgesh Sharma vs. Jayashree, reported in 2009 (1) Mh.L.J. 66,
- iii) Balkrishna Shivappa Shetty vs. Mahesh Nenshi Bhatka and others, reported in 2003 (4) Bom.C.R. 45,
- iv) Narula Trading Agency vs. Commissioner of Sales Tax, Delhi, reported in 1981 Delhi 1,
- v) National Institute of mental health and Neuro Sciences vs. C. Parmeshwara, reported in AIR 2005 SC 242,
- vi) M/s. Ramchand & Sons Sugar Mills Ltd. Barabanki (U.P.) vs. Kanhayalal Bhargava & others, reported in AIR 1966 SC 1899,

vii) Kailashpati Narain Singh and others vs. Bholu Sanani and others, reported in AIR 1980 Patna 111,

viii) Steelage Industries Ltd. and Anr. vs. Smt. Chandar Bagai, reported in AIR 1992 Bombay 406.

4. Learned counsel for the respondent-plaintiff submits that the trial court has allowed application Exh.70 to the limited extent, as prayed in the application. There is no need to interfere in the order passed by the trial court. The writ petition is devoid of any merits and the same is liable to be dismissed.

5. In terms of provisions of Order XVIII Rule 17 of C.P.C. the Court may exercise the said powers suo moto and also at the invitation of the parties. In the instant case, inadvertently and due to oversight by the advocate appearing for the respondent plaintiff, certain document i.e. map which is already placed on record, was not exhibited and numbered. This position is not disputed. The said mistake can be corrected by re-summoning the witness and to exhibit the correct map, which is already placed on record before the trial court. I do not find any fault in the order passed by the trial court. The apprehension expressed by the petitioner that the said witness may be subjected to examination again under the pretext of proving the said map appears to be not well founded. Learned Judge of the trial court has allowed the application Exh.70 to the extent, as prayed

in the said application. In order to exhibit the correct map, application Exh.70 has been filed to recall P.W.2. The cases relied upon by the learned counsel for the petitioners are explaining the scope of provisions of Order XVIII Rule 17 of C.P.C.. There is no dispute about the same. However, in the facts of the present case, I do not find any merits in the writ petition. Writ petition is accordingly dismissed. No costs.

6. The respondent-plaintiff is at liberty to file an application before the trial court for expeditious hearing of the suit.

(V. K. JADHAV, J.)

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