

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7765 OF 2017

1. Shantilal s/o Chagan Sure
Age : 45 years Occu: agril
R/o ; Surewadi, Harsool
Tq. and Dist.: Aurangabad.
2. Ganesh s/o Chagan Sure,
Age : 40 years Occu: agril
R/o ; Surewadi, Harsool
Tq. and Dist.: Aurangabad.
3. Sarubai w/o Shantilal Sure
Age : 42 years Occu: agril & household
R/o ; Surewadi, Harsool
Tq. and Dist.: Aurangabad.

...Petitioners

Versus

1. Manohar S/o Vishram Sure
Age : 45 years Occu: agril
R/o ; Surewadi, Harsool
Tq. and Dist.: Aurangabad.
2. Manabai w/o Ukhaji Dudhe
Age : 55 years Occu: Service
R/o : N-12 HUDCO Aurangabad.
3. Tulshiram s/o Dhansing Sure,
Age : 40 years Occu: agril
R/o ; Surewadi, Harsool
Tq. and Dist.: Aurangabad.

...Respondents

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Mr. Narendra V. Mande, Advocate for petitioners
Ms. Pooja Langhe Patil, Advocate for respondent no. 1

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[CORAM: SUNIL P. DESHMUKH, J.]
Date: 28th July, 2017

JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the appearing parties.
2. Writ petition is moved by defendants no. 1, 2 & 4 against order dated 2nd December, 2016, passed by 5th joint civil judge, junior division, Aurangabad on application exhibit-87 in regular civil suit no. 1342 of 2012.
3. Regular civil suit has been instituted by respondent no. 1 – plaintiff, seeking perpetual injunction in respect of suit property admeasuring about 1800 sq. ft. situated in land survey no. 156/4, of village Surewadi /Harsool, taluka and district Aurangabad.
4. While suit had been instituted in 2012, reference has been made in the plaint to proceeding bearing regular civil suit no. 679 of 2005 filed against one Satyabhamabai.

5. Certified copies of plaint in regular civil suit no. 679 of 2005, application for temporary injunction in said suit as well as certified copy of examination-in-chief in said suit are sought to be produced under application exhibit-87.

6. Application exhibit-87 has been allowed under order dated 2nd December, 2016.

7. The application had been resisted by present petitioner contending that documents ought to have been filed while presenting the suit or at least before evidence, pursuant to Order XIII of the Code of Civil Procedure.

8. It appears that, it had been the case of petitioner - defendant no. 1 that copies of said documents had not been tendered along with the plaint. Suit proceeded and evidence of other side had commenced and at that time certified copies of documents referred to above have been sought to be placed on record.

9. Learned counsel Mr. Narendra V. Mande for petitioner purports to point out that the documents sought to be produced on record were within the knowledge of plaintiff which is also reflected in the plaint. He submits that at least two occasions, on which production was possible, it

had been avoided, its avoidance is totally *malafide* and unfair. There was no whisper about the reason for delayed production of documents and application exhibit-87 had been granted only for the reason, it would be in the interest of justice.

10. According to learned counsel Ms. Pooja Langhe Patil for respondent – plaintiff, the documents are public documents in nature and having regard to Section 75 of the Indian Evidence Act, the application deserved to be allowed. She refers to that there is no embargo on exercise of power by the court to allow production at a later stage of proceeding. She further purports to argue that even production is allowed at the appellate stage and as such, no illegality can be said to have been committed by passing impugned order. Production of documents has been allowed in the present matter of certified copies of documents copies of which had already been placed on record. She refers to and relies on a couple of reported judgments viz. in the case of *Chitrakala Fal Dessai V/s Balu Marathe* reported in 2006(5) ALL MR 438, and in the case of *Venu Gopal Pari and others V/s Nilconta Xete 1975 Lawsuit(Bom) 326*.

11. During the course of submission, learned counsel for petitioners purports to refer to and rely on the case of *Nirmal Singh V/s Manoharlal* reported in 2016(3) CCC 345(H.P.) wherein the court had found documents to be not relevant and despite knowledge were being submitted belatedly and application was lacking bonafides. Mr. Mande further refers to and relies on the case of *Hatimabhai Khurshid Hussein Bohari V/s Chandanmal Ragunath Sakhale* reported in 2004(2) ALL MR 898. Said case has been decided on a different factual scenario and context had been entirely different. It was in the context of that case observations have been made as appearing in reported decision. No analogy from aforesaid two judgments viz. *Nirmal Singh V/s Manoharlal* reported in 2016(3) CCC 345(H.P.) and *Hatimbhai Khurshid Hussein Bohari V/s. ChandanmaI Raghunath Sakhale* reported in 2004(2) ALL MR 898 can be drawn as would be applicable to scenario in present matter. These judgments appear to have been cited before trial court and have been referred to by learned judge in the impugned order. The trial court relied on *Chitrakala Fal Dessai's* case (supra) whereunder it appears that production of documents had been allowed in second appeal observing that the stigma that documents in question could be

manufactured, does not include public documents and considered that it covers present matter, as such, trial court has allowed the application exhibit-87.

12. After hearing learned counsel for the parties and on perusal of impugned order, it cannot be said that trial court has committed any error in granting application exhibit 87, having regard to the overall legal position emerging from the citation, particularly the one in case of *Chitrakala Fal Dessai V/s. Balu Marathe*, reported in 2006(5) ALL MR 438.

13. In the circumstances, it is difficult to accede to the request made in present writ petition to set aside impugned order.

14. The Inconvenience being caused to the petitioners in the process can be made good by imposing costs. The matter can be considered for costs since there has been a little laxity on the part of plaintiff in preferring application for production of documents.

15. Having regard to the nature of dispute, it is appropriate that costs of Rs. 5000/- be imposed on the respondent - plaintiff.

16. As such, writ petition stands dismissed. However, costs of Rs. 5000/- (Rs. Five thousand only) be paid to petitioners by the respondent – plaintiff. Costs be deposited by respondent no. 1 – plaintiff in trial court within a period of four weeks from the date of receipt of writ of this order.

17. Rule stands discharged.

[SUNIL P. DESHMUKH, J.]

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