

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

WRIT PETITION NO. 2498 OF 2014

Mr. Marutirao Baburao Khedekar. ... Petitioner.

Versus

Mr. Baburao Ravji Chavan & ors. ... Respondents.

Mr. Surel Sunil Shah, advocate for petitioner.

Mr. Anand S. Kulkarni, advocate for respondent Nos. 1 to 8.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : OCTOBER 31, 2017**

P.C.:

1 Heard the learned Counsel for the Petitioner and learned counsel for the respondents.

2 Rule. Rule made returnable forthwith with the consent of the parties.

3 The Petitioner herein happens to be the plaintiff in Regular Civil Suit No. 588 of 2001. The Petitioner impugns the order dated 7th February, 2014 passed by the 4th Joint Civil Judge, S.D. Solapur. The facts in nut-shell are that-

 The Defendant had granted irrevocable power of attorney in favour of the Petitioner which he had got cancelled unilaterally and the same was under challenge. In the Regular Civil Suit in the course of cross-examination of the defendant, the defendant had admitted that the defendant had filed complaint against the Petitioner in the office of Deputy Director of Land Records(D.D.L.R.) at Pune on 2nd April, 2012 and in the said proceedings the D.D.L.R. had issued summons to the Petitioner to remain present on 28/6/2012. In the said proceedings, the defendant had specifically contended that he had voluntarily not filed any complaint before the Deputy Director of Land Record and that he had admitted that he had received summons asking him to remain present and he had answered the said summons.

4 In view of this inconsistency in the cross-examination of the defendant, the plaintiff had filed application on 6/12/2013 seeking relief of requesting the court to direct the respondent No. 1 to produce the copy of the complaint dated 22/5/2012 filed by the defendant before the Office of Deputy Director of Land Record and summon the Deputy Director of Land Record as court witness to prove the same. An application was filed below Exh. 233. The plaintiff had prayed for issuing witness summons to the Deputy Director of Land Record.

5 The Court considered the contentions of the defendant in the cross-examination and has arrived at a conclusion that the plaintiff and the defendant are admitting proceedings between them before the Deputy Director of Land Record, Pune. It is also considered that neither the Petitioner nor the defendant were taken by surprise and the Court was further pleased to observe that the relevancy, genuineness, and the correctness of the said events i.e. of pendency of the proceedings before the Deputy Director of Land

Record can be ascertained only after the said documents are brought on record and subjected to cross-examination. The court had further permitted the defendant to lead additional evidence, if necessary. In view of this observation, the Court was pleased to partly allow the application but had rejected prayer of the plaintiff seeking witness summons against the Deputy Director of Land Record and had permitted the plaintiff to bring the documents on record which he had filed alongwith Exh. 232. The plaintiff had specifically prayed for bringing on record the documents dated 22/5/2012, 24/5/2012 and 28/6/2012 which pertain to the proceedings before the Deputy Director, Land Records and all other relevant documents in the said proceedings.

6 It is a matter of record that the documents cannot be treated as public document although they pertain to the proceedings before the Deputy Director, Land Record and therefore, the same will have to be proved by the Deputy Director of Land Records. It would be necessary to produce the original proceedings before the Court and

it would further be necessary to examine the Deputy Director of Land Records in view of the inconsistency in the cross-examination of the defendant. Hence, the order dated 7/2/2014 needs to be modified accordingly. The Petition deserves to be allowed.

7 The Rule is made absolute in terms of prayer clause (c).
The order dated 7/2/2014 is modified as follows :

“The learned 4th Joint Civil Judge (Sr. Dn.), Solapur shall issue witness summons to the concerned Deputy Director of Land Records to appear in person before the Court and produce the proceedings between the plaintiff and defendants filed in May, 2012.

8 The trial is expedited. The witness summons be issued within four weeks from the date of receipt of this order.

9 In view of the fact that the suit was expedited by this court in the year 2014, the learned Court is requested to conclude recording of evidence as far as possible by 30th July, 2018.

The parties to act on the authenticated copy of this order.

Office to communicate this order to the concerned court forthwith.

(SMT. SADHANA S. JADHAV,J)