

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 6115 OF 2016

Shri Gajanan Takya Raut (Deceased)
Through LRs.

...Petitioners

Versus

Sane Guruji Co-operative Collective
Farming Society Ltd. And Anr.

...Respondents

....

Mr.Sanjiv Sawant, Advocate a/w. Hemant Kadam, for the
Petitioners.

Ms.Neha Bhide, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 10th MARCH, 2017

P.C.

1. Heard Mr.Sanjiv Sawant, learned Counsel for the
petitioners and Ms.Neha Bhide, learned Counsel for respondent
No.1, at length.

2. By this Petition under Article 227 of the Constitution of
India, the petitioners have challenged the judgment and order
dated 18.12.2015 passed by the learned Civil Judge, Junior
Division, Palghar below Exhibit-77 in R.C.S. No.162/2011. By
that order, the learned trial Judge rejected the application made
by the petitioners under Section 65 of the Indian Evidence Act,

1872 (for short, 'Act') for leading secondary evidence.

3. Ms. Bhide invited my attention to the judgment and order dated 19.10.2012 passed by the learned 4th Jt. Civil Judge, Junior Division, Palghar below Exhibit-5 in R.C.S. No.162/2011. In particular she invited my attention to paragraphs-12 onwards. She submitted that after considering the material on record, the learned trial Judge *prima facie* held that the petitioners' father was not a member of the first respondent Society. She, therefore, submitted that as the petitioners' father was not member of the society and the petitioner is claiming through him, he cannot maintain dispute under Section 91 of the Maharashtra Co-operative Societies Act, 1960.

4. During the course of hearing, I suggested to the learned Counsel appearing for the parties that the petitioners will first lead evidence on the limited issue as to whether their father was Member of the society and in the event of the petitioners establishing this fact, they will be at liberty to file fresh application for leading secondary evidence. In that case, the learned trial Judge will decide the application uninfluenced by the observations made in the impugned order.

5. Learned Counsel appearing for the parties have agreed for adopting this course. In view thereof, by consent of parties, the Petition is disposed of in the following terms :

- i. The petitioners will lead evidence on the limited issue as to whether Thakya Pandu Raut was Member of the first respondent society. It is clarified that while considering this issue, the learned trial Judge will not consider the audit report for the period 1.7.1983 to 30.6.1985. The learned trial Judge will decide this issue on the basis of evidence on record. If the learned trial Judge holds that Thakya Pandu Raut is not a member, he will pass appropriate order.
- ii. In the event of the trial Court holding that Thakya Pandu Raut was member of the first respondent society, in that case the petitioners will be at liberty to file fresh application for leading secondary evidence. The learned trial Judge will decide such application uninfluenced by the observations made in the impugned order.
- iii. Petition is disposed of in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)