

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

WRIT PETITION NO.3806 OF 2017

Leelabai Eknath Dhotre & ors. ... Petitioners

Vs.

Ashok Vinayak Dhotre ... Respondent

Mr.A.B. Avhad for Petitioner

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: APRIL 10, 2017**

P.C. :

1. Not on Board. Upon mentioning, taken on board.
2. This petition is filed against the order dated 25.4.2016 passed by the learned Ad-hoc District Judge III, Pune. The plaintiff i.e., the present respondent, has filed suit for injunction against the petitioners, who were the defendants. The suit was decreed against which appeal was preferred by the original defendant i.e., EEknath Dhotre, the husband of the present petitioner No.1. Eknath Dhotre, died during the pendency of the appeal. Thereafter, being the wife of the Eknath Dhotre, petitioner No.1 Leelabai came on record as his legal representative, who filed application under Order 41 Rule 21 of the Civil Procedure Code for

production of additional evidence i.e., exhibit 23. The said application was opposed. The learned Judge after hearing both the sides and considering the nature of the documents, rejected the application. Hence, this petition.

3. The learned Counsel for the Petitioners submitted that the first set of documents i.e., serial Nos.1 to 6 in the said application, are in respect of Regular Civil Suit No.422 of 2014 filed by the present petitioner against the respondent i.e., the original plaintiff. She has filed that suit after demise of her husband and therefore, those documents were not available at the time of hearing of the suit. He further submitted that the document Nos.7 to 11 are sale deeds of 1987 and 1993 and documents Nos.12 and 13 are the assessment extracts of the house of the petitioner and the respondent of 2013. He submitted that the appellant wants to use the certified copies of the registered sale deeds for the purpose of adjudication of the real issue in the appeal. These documents are going to help the Court to fix the exact area which was sold to the respondent by the predecessor of the appellant.

4. Perused the order. Under Order 41 Rule 27 of the CPC, it is necessary for the party making such application to show that the

appellant with due diligence was not in possession of the documents which he wants to tender in appeal by way of evidence. Secondly, the applicant has to show that though the applicant tried to produce those documents before the trial Court, those documents were not allowed in the evidence by the trial Court. These two conditions are not fulfilled by the present petitioner while moving the application below exhibit 23. The observations made by the trial Court that these sale deeds were very much available and in custody of the appellant, are correct. Thus, non-production of the documents shows negligence of the appellant at the time of the adducing the evidence.

5. Under such circumstances, I do not find any reason to interfere with the impugned order. Writ Petition is, therefore, dismissed.

(MRIDULA BHATKAR, J.)