

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

**WRIT PETITION NO.7074 OF 2017**

Shri Dadaso Sambhaji Padari & Ors. ... Petitioners

Vs.

Dr.Gokul Ashok Kale & Ors. ... Respondents

Mr.Tushar Sonawane for the Petitioners

**CORAM: Mrs.MRIDULA BHATKAR, J.  
DATED: JULY 6, 2017**

**P.C. :**

1. Not on Board. Upon urgent mentioning, taken on Production Board.
2. This Writ Petition is directed against the order dated 28.7.2016 passed by the learned Civil Judge Junior Division, Baramati below exhibit 62 in Regular Civil Suit No.13 of 2014, thereby rejecting the application seeking permission to issue witness summons to a middleman, namely, Vishwas Atole. The petitioners/plaintiffs have filed the suit for cancellation of sale deed date 18.4.2011. The main contention is that the consideration amount of the land was fixed as Rs.48 lakhs and accordingly,

earnest money receipt of 9.2.2011 was executed between the parties. However, at the time of actual sale deed, which was executed two months thereafter i.e., on 18.4.2011, the amount of consideration was mentioned as Rs.15 lakhs instead of Rs.48 lakhs. The plaintiff No.1 is blind and all other plaintiffs are illiterate and therefore, they did not understand that real amount of consideration in respect of the said land was fixed as Rs.48 lakhs and therefore, the suit for cancellation of the sale deed is filed.

3. It is argued by the learned Counsel for the petitioners that during the cross-examination of the defendants, a photocopy of the earnest money receipt dated 9.2.2011 was produced, however, the defendant/respondent denied the said receipt and therefore, the plaintiff moved application below exhibit 62 for calling Vishwas Atole as a witness. The learned Counsel for the petitioners / plaintiffs have submitted that the learned Judge has committed error in rejecting the application and ought to have considered that plaintiff No.1 is blind and the other plaintiffs are illiterate. He further submitted that in the cross-examination, the earnest money receipt was denied. It is found necessary to prove that the receipt through Vishwas Atole.

4. Perused the impugned order, the plaint and the other documents filed before the Court. The impugned order is well reasoned. In the plaint, nowhere the plaintiff has mentioned that when he had knowledge that the consideration amount was fixed as Rs.48 lakhs in February 2011 and the amount of only Rs.15 lakhs was mentioned and only that amount was received. Thus, the plaint is completely silent on the point that when the plaintiff had knowledge that the amount of Rs.48 lakhs was to be received by them, I am of the view that it is a very material point and if it is not answered, it really goes to the root of the matter.

5. In the circumstances, nothing can be faulted with the impugned order.

6. Writ Petition is dismissed summarily.

**(MRIDULA BHATKAR, J.)**