

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

WRIT PETITION NO. 1445 OF 2014

1. Shri Gopal Rama Mudgal, ..Petitioners.
since deceased, by his LRs
1a.Smt. Anandi Gopl Mudgal and
Ors

Vs

1.Shri Rama Timma Pujari and .. Respondents
Ors.

Mr.Drupad S. Patil, Advocate for Petitioners.
Mr. Atul P. Vanarse, Advocate for Respondents no. 1 to 5.

CORAM : R.G.KETKAR,J.
DATE : 02/02/2017

PC:

1. Heard Mr. Drupad Patil, learned counsel for the petitioners and Mr.Atul Vanarse, learned counsel for respondents no.1 to 5 at length. On the oral application made by Mr.Patil, leave to delete respondents no. 6 to 9 is granted as respondents no. 1 to 5 are only the contesting respondents. Amendment shall be carried out forthwith. Rule. Mr.Vanarse waives service on behalf of the respondents. Having regard to the narrow controversy raised in the petition as also at the request and by consent of the parties, Rule is made returnable forthwith and petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as plaintiffs, have challenged the Judgment and order dated 19.9.2013 passed by

the learned 16th Jt Civil Judge, Junior Division, Pune below Exhibit-115 in Regular Civil Suit No. 1308 of 2005. By that order, the learned trial Judge allowed the application filed by respondents no. 1 to 5, hereinafter referred to as 'defendants', for direction to the plaintiffs to produce:

1. Regularization Certificate (Gunthewari Certificate) along with sanctioned plan of Shri Gopal Rama Mudgal of Survey No.60/1/2 Dobarwadi, Ghorpadi, Pune.
2. Regularization Certificate (Gunthewari Certificate) along with sanctioned plan of Shri Yallappa Timma Pujari of Survey No. 60/1/2 Dobarwadi, Ghorpadi, pune.
3. Regularization Certificate (Gunthewari Certificate) along with sanctioned plan of Smt. Shantabai Hira Hirekerur of Survey No.60/1/2 Dobarwadi, Ghorpadi, Pune.
4. Regularization Certificate (Gunthewari Certificate) along with sanctioned plan of Shri Ashok Hanumanta Hirekerur of Survy No.60/1/2 Dobarwadi, Ghorpadi, Pune.
5. Regularization Certificate (Gunthewari Certificate) along with sanctioned plan of Shri Mahesh Hanumanta Bhadrawati of Survey No. 60/1/2 Dobarwadi, Ghorpadi, Pune.
6. Regularization Certificate (Gunthewari Certificate) along with sanctioned plan of Shri Yallappa Ramappa Yellur of survey No. 60/1/2 Dobarwadi,Ghorpadi, Pune.
7. Regularization Certificate (Gunthewari Certificate) along

with sanctioned plan of Shri Hanumanta Rama Mudgal of Survey No. 60/1/2 Dobarwadi, Ghorpadi, Pune.

8. Regularization Certificate (Gunthewari Certificate) along with sanctioned plan of Shri Nagraj Timappal Bhadrawati of Survey No.60/1/2 Dobarwadi,Ghorpadi, Pune.

3. In support of this petition, Mr. Patil submitted that the learned trial Judge failed to consider the reply filed by the plaintiffs opposing the application Exhibit-115. In the reply, the plaintiffs specifically contended that the defendants have not shown relevancy of these documents for determination of the controversy involved in the suit. They have also not given any reason for production of these documents. Neither the plaintiffs nor the defendants have referred to or relied upon these documents in the pleadings. In any case, regularization certificates and plans being public documents, the defendants can obtain certified copies from appropriate authorities and, therefore, the application filed by the defendants for production of documents deserves to be dismissed. He invited my attention to paragraph 5 of the impugned order. In paragraph 5, the learned trial Judge specifically recorded that before passing the order of production, it is necessary to see justness and relevancy of the documents. In paragraph 6, the learned trial Judge, thereafter, proceeded to observe that these documents are necessary and helpful for determining the status of open portion

situate in the suit property and the property owned by defendants no.1 to 5. He submitted that the said finding is perverse and, therefore, the impugned order deserves to be set aside.

4. On the other hand, Mr. Wanarse supported the impugned order. He submitted that the learned trial Judge rightly came to the conclusion that the regularization certificates and the sanctioned plans owned by the plaintiffs are necessary for determining the controversy raised between the parties.

5. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. It is not disputed that neither the plaintiffs nor the defendants have referred to and/or relied upon the regularization certificates and sanctioned maps under Gunthewari map. Perusal of the application filed by the defendants shows that they have not also made out the case as to how these documents are relevant for deciding the controversy between the parties. Except calling upon the plaintiffs to produce documents no.1 to 8 referred therein, the application made by the defendants is absolutely silent. In other words, the application is bereft of particulars. The learned trial Judge has also not considered the application made by the defendants before passing the impugned order. The learned trial Judge has also not dealt with relevancy of these documents while

passing the impugned order. Having regard to the fact that these documents are not referred to and relied upon either by the plaintiffs or the defendants, in my opinion, the learned trial Judge was not justified in allowing the application. Hence, Petition succeeds. Impugned order is set aside. Application Exhibit 115 stands dismissed. Rule is made absolute accordingly with no order as to costs.

(R.G.KETKAR, J.)