

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
**WRIT PETITION NO. 933 OF 2015**

Kavita Raghunath Juvatkar & Anr. ...

Petitioners

Vs.

State of Maharashtra & Anr. ...

Respondents

Mr.A.P.Ranade, for the petitioners.

Ms. Vaishali Nimbalkar, AGP, for respondent No1.

Mr. S.P.Thorat, for the respondent No.2.

**CORAM: SMT.SADHANA S.JADHAV, J.**

**DATE : 4<sup>th</sup> October, 2017.**

**P.C.**

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

2. The petitioners herein happen to be the original defendants in RCS No.72 of 2009. The respondent No.1 herein had filed a suit against the present petitioners seeking the relief of perpetual injunction and possession of the suit property which is described in the plaint. It is as under :

| अ.नं. | सर्वे नं. | हिस्सा नं. | क्षेत्र            | आकार |
|-------|-----------|------------|--------------------|------|
| १     | (६१) २३अ  | १          | ०.२४.२९<br>१.६०.८२ | ०.०९ |

3. The defendants i.e. the present petitioners had filed written statement and had specifically contended that the plaint suffers from

suppression of material facts. It was specifically contended in the written statement that the petitioners had purchased the land from Survey No.20 Hissa No.1 admeasuring 4.5 sq. mtrs. The petitioners had purchased the land which was demarcated in the plan. The total area of the land purchased was approximately 4990 sq. ft. The consideration was duly paid to the plaintiff. The petitioners had developed the said plot. They had dug a well, built a bungalow and had planted about 10 mango tries and also certain other trees and had developed the plot. According to the petitioners, it was subsequently transpired that 3,500 sq. ft. for the said land was from Survey No.20, whereas the remaining 1500 sq. ft. area was from Survey No.23. In any case, the plaintiff happens to be the owner of the homogeneous plot i.e. Survey No.20 as well as Survey No.23. It is also contended in the written statement that subsequently an agreement was executed between the plaintiff and the defendants and an additional consideration of Rs.1,05,000/- was paid to the plaintiff and therefore, according to the defendants, the plaintiff had suffered from suppression of material facts.

4. The defendants had therefore executed two documents dated 16.10.2001 and 26.1.2002. The petitioners/defendants had prayed to the Court that these documents be impounded. The plaintiff had raised an

objection that the said documents are under-valued and, therefore, they cannot be impounded. It was also contended that since they are unregistered documents, they cannot be read in evidence.

5. The learned Civil Judge, J.D., Deogad has rejected the said application on the ground that the document produced by the defendant at Exhibit 33/1 is a sale deed, whereas the document produced at Exh.33/3 bearing date 26.1.2012 is an exchange deed and therefore, according to the Court, it was necessary that the said documents should be registered.

6. The plaintiff had filed his affidavit in examination-in-chief dated 18.10.2013. At the stage of cross-examination, the defendants had filed an application seeking the relief of impounding the said documents. The Court had observed that a Court Commissioner was appointed for inspection of the suit property. However, the report of the Court Commissioner does not appear to have been taken on record as there is no reference to the same in the impugned order. The learned Court has held that the said documents can be used for collateral purpose and was prima facie of the opinion that the defendants have filed the said application only for the purpose of filling the lacuna and therefore the said application was rejected. The learned trial Court has also observed that the defendants had not claimed any relief on the basis of disputed documents and therefore

the same cannot be impounded with the purpose to exhibit those documents in the course of evidence.

7. The learned counsel for the respondent No.2 submits that in fact, a contention was raised in the written statement, the defendants have overlooked the fact that description of the property mentioned in the plaint is different from the property which is in possession of the defendants and therefore the plaintiff had prayed for possession.

8. The learned counsel for the petitioners submits that the fact that they have already developed the plot and have built a residential house on the suit property, it would be necessary in the interest of justice to impound the said documents as the subsequent document is not only a deed of exchange but it appears to be a correction after subsequent facts had come to light.

9. Taking into consideration the fact that although the documents were filed belatedly i.e. at the stage of cross-examination, the contentions were raised in the written statement and it would become incumbent upon the Court to frame issues on the basis of pleadings in the plaint as well as the contentions in the written statement. The Petition deserves to be allowed. However, it is made clear that although the documents would be

impounded at this stage, the same would be subject to being exhibited and taken on record as contemplated under the Indian Evidence Act.

**ORDER**

- (i) The order dated 16.9.2014 passed by the Civil Judge (U.D.), Deogad in RCS No.72/2009 is hereby quashed and set aside.
- (ii) The Petition deserves to be allowed in terms of prayer clause (b).
- (iii) The learned Civil Judge, J.D. Deogad shall impound the documents and proceed with the trial at the stage of cross-examination and shall make every endeavour to conclude the suit on or before 30.4.2018. After impounding the said documents, the consequential steps be taken expeditiously by the trial Court.

Rule is made absolute. The Petition is disposed of.

**[SMT. SADHANA S.JADHAV, J.]**