

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2313 OF 2018

AMJAD ALI FAYYAZ ALI AND OTHERS
VERSUS
AKBAR ALI AABED ALI AND OTHERS

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Advocate for the Petitioners : Shri Deshpande Dhananjay P.

Advocate for the Respondents : Shri Kudale Bhagwan S..

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 12th March, 2018

Per Court:

1 The Petitioners, who are the Defendants in Special Civil Suit No.63/2017 (earlier filed on 11.02.2013 and acquired a new number on transfer of proceedings), are aggrieved by the order dated 02.02.2018 passed by the Trial Court, by which, the application Exhibit-78 praying for issuing summons to the Sub Registrar to produce the original document of 1353 Fasli, to exhibit the said document and to examine the Translator, has been rejected.

2 I have considered the strenuous submissions of the learned Advocates for the Petitioners/ Defendants and the Respondents/ Plaintiffs. With their assistance, I have gone through the petition paper book. I have also considered the affidavit in reply of the Respondents and the judgment

of this Court in the matter of Doma Lalaj Chachere and others vs. Executive Engineer, Gosekhurd Rehabilitation Division and others, 2007 (1) Mh.L.J. 635.

3 The Petitioners/ Defendants have taken a stand that their predecessor-in-title Fayyaz Ali is the owner of the house property at issue. It is a self acquired property. The oral and documentary evidence was adduced by all the litigating sides and after closing of evidence by the Defendants on 12.04.2016, the stage was for advancing final arguments.

4 On 22.12.2017, the Defendants preferred the application Exhibit-78 by which, they prayed for summoning the Sub Registrar along with the original document, which is a sort of a Guarantee Deed purportedly issued by Fayyaz Ali in favour of the Government, and to examine the Translator Advocate Abdul Ansari. It was also prayed that the said document, which is in Urdu, be exhibited and read in evidence.

5 The learned Advocate for the Petitioners/ Defendants has strenuously canvassed that the document at issue is a very old document written in Urdu in 1353 Fasli. The age of document would indicate that Fayyaz Ali had issued the Guarantee Deed, which would indicate that he owned the property in 1353 Fasli. This document would support the case of the Defendants that the house was self acquired property of Fayyaz Ali.

6 I have perused the Urdu document as well as the English translation thereof. It is tried to be canvassed by the Petitioners that the

Urdu document placed at page 31 is a freshly prepared document based on the original document. It is said to be a certified copy issued by the Sub Registrar, Class-II, Beed. Neither any explanation has been put forth in the application Exhibit-78, nor in this petition as to whether, the Urdu document is a certified copy drawn from the original or whether, it is a document, which is freshly prepared by copying the text of the original document verbatim. The bond paper used for preparing the Urdu document terming it to be a certified copy of the original, is dated 18.04.2017 in Marathi as well as in English, as per the stamp of purchase appearing on the said bond paper. So also, there is no explanation forthcoming in Exhibit-78 as well as in this petition as to what prevented the Defendants from referring to this document and leading evidence on the same at the time of recording of oral evidence. The original Plaintiffs have specifically stated that this alleged document is a forged document by using a fresh bond paper purchased on 18.04.2017.

7 Considering the law laid down by this Court in the cited judgment in Doma Lalaj Chachere (supra), the applicant has to establish due diligence. If a document of 1353 Fasli was within the knowledge of the Defendants, they should have produced it before the Court at the time of recording of evidence. There are no pleadings to indicate as to what were the circumstances in which, these Petitioners located the said document.

8 Considering the above, I do not find that the impugned order passed by the Trial Court could be termed as being perverse or erroneous. This Writ Petition, being devoid of merit is, therefore, dismissed.

kps

(RAVINDRA V. GHUGE, J.)