

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

7 WRIT PETITION NO. 8041 OF 2017

SUJATA HANMANT GHODKE AND OTHERS
VERSUS
GOVINDRAO VASANRAO PAWAR

...

Advocate for Petitioners : Mr. Anil M. Gaikwad.

Advocate for Respondent : Mr. Dhananjay P. Deshpande.

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CORAM : **V. K. JADHAV, J.**
DATE : 30th January, 2018.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the order dated 2nd March, 2017 passed by the 3rd Joint Civil Judge Senior Division, Latur below Exhibit 55 in Special Civil Suit No.34 of 2013, the original Defendants have approached to this Court by filing the present writ petition.

3 Brief facts giving rise to the present writ petition are as follows:

The Respondent / original Plaintiff has instituted the suit for specific performance of contract alongwith the consequential reliefs. The present Petitioners / original Defendants have strongly resisted

the said suit by filing the written statement and denied the said claim and prayed for dismissal of the suit. The Respondent / Plaintiff has filed an application Exhibit 55 and prayed for issuance of witness summons to the Advocate to prove the factum of issuance of legal notice by the Petitioners / Defendants to the Respondent / Plaintiff. The present Petitioners have strongly opposed the said application. However, the Trial Court has allowed the said application. Hence, this writ petition.

4 The learned counsel for Petitioners / Defendants submits that there is no specific pleading with regard to issuance of said notice by the Petitioners / Defendants through their Advocate to the Respondent / Plaintiff and in absence of such specific pleading, the application Exhibit 55 for issuance of summons to the said Advocate as witness is unwanted and uncalled for. The learned counsel submits that the Respondent / Plaintiff has not submitted the name of the said witness in the list of the witnesses and as such, the application seeking issuance of witness summons is liable to be rejected on this ground also.

5 The learned counsel for the Respondent / Plaintiff submits that after institution of the suit, the Respondent / Plaintiff has received

the said notice and the said notice has been sent by the Defendants through the Advocate. In the said notice, the Petitioners / Defendants have admitted about the execution of the agreement of sale. The learned counsel submits that due to the said reason, this fact does not find place in the pleadings. The learned counsel submits that in other way also the evidence is not required to be pleaded and the Respondent / Plaintiff can substantiate his case on the basis of the evidence available.

6 On careful perusal of the impugned order, I do not find any fault in the impugned order. The Petitioners / Defendants have strongly resisted the said application mainly on the ground that they have not issued such notice to the Respondent / Plaintiff through the Advocate and the Respondent / Plaintiff in collusion with the said Advocate has created false and bogus document. Even the signature on the said notice does not belong to any of the Defendants. The learned Judge of the Trial Court has therefore, rightly observed that this is not the stage to decide about the truthfulness of the said document and it is for the Trial Court to consider said ground only after the evidence is over, while delivering the judgment after hearing the parties. So far as proving of the contents of the said notice through the

witness i.e. the Advocate, who has issued the said notice at the instance of the Petitioners / Defendants is concerned, the evidence is not required to be pleaded. Since the Petitioners / Defendants have denied the execution of the agreement of sale and if in such notice the Petitioners / Defendants have admitted about the execution of the agreement of sale, the evidence in the form of proving the contents of the said legal notice is quite relevant. The learned Judge of the Trial Court has thus, rightly allowed the application Exhibit 55. No interference is required. Hence, the following order:

ORDER

The writ petition is hereby dismissed. In the circumstances, there shall be no order as to the costs.

[V. K. JADHAV, J.]

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