

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

915 WRIT PETITION NO. 9843 OF 2017

GANGADHAR JANARDHAN VYAVHARE AND ANOTHER
VERSUS
MATHURABI JANARDHAN VYAVHARE

.....

Advocate for Petitioners : Mr. Naik Dhananjay A.

Advocate for Respondent-sole : Mr. P. F. Patni

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CORAM : V. K. JADHAV, J.

DATED : 18th APRIL, 2018

PER COURT:-

1. Heard finally with consent at admission stage.
2. The respondent/original plaintiff has instituted a suit bearing R.C.S. No. 749 of 2008 for partition and separate possession and a decree of perpetual injunction against the petitioners. The respondent-plaintiff is claiming to be the wife of deceased Janardhan and the mother of present petitioner no.1 and in that capacity, instituted the suit for partition and separate possession. The petitioners have strongly resisted the said suit by filing their common written statement and denied the relations

with respondent/plaintiff. It has been specifically denied that the plaintiff is the wife of deceased Janardhan. On the basis of the rival pleadings of the parties to the suit, the trial court has framed issues. Both the parties led their oral and documentary evidence in support of their rival contentions and the learned Judge of the trial court, by judgment and decree dated 26.02.2013, dismissed the suit. Being aggrieved by the same, the respondent-plaintiff has filed an application exhibit 22 under Order 41 Rule 27 of the Code of Civil Procedure for production of additional evidence in the appellate court. According to the respondent/plaintiff, certain important documents were inadvertently not produced before the trial court due to illiteracy and old age of the respondent/plaintiff. The respondent/plaintiff claims that those documents will bring the truth on record and ultimately, the respondent/plaintiff would get justice. The petitioners have strongly resisted the said application by filing their say. The learned Adhoc District Judge-3, Aurangabad, by its impugned order dated 07.03.2017 passed below exhibit 22 in R.C.A. No. 92 of 2013, allowed the said application. Hence this Writ Petition.

3. The learned counsel for the petitioners submits that the said suit came to be instituted way back in the year 2008 and all the documents sought to be produced before the first appellate court by filing application exhibit 22 were prepared in the year 2011 and onwards. The learned counsel submits that the Election Identity Card is dated 18.04.2011, the Aadhar Card is dated 02.06.2011 and the medical prescription is also of the year 2014. The learned counsel submits the so far as the attendance card/wages slip produced on record along with the application exhibit 22 is concerned, the same is not issued by any competent authority and it is not an authentic document. The learned counsel submits that the first appellate court has not considered the same and blindly accepted the application exhibit 22 only for the reason that the respondent/plaintiff is an illiterate and 73 years' old lady fighting for establishing her relations with petitioner no.1, who is none else but her own son.

4. The learned counsel for the respondent/original plaintiff submits that all the documents submitted alongwith the list in application exhibit 22 are the public documents and the first appellate court may consider the said documents at the time of

final hearing. There is no need to interfere in the order impugned in this Writ Petition.

5. It would not be desirable to make any observations at this stage since the substantial appeal against the judgment and decree passed by the trial court is pending before the lower appellate court. However, *prima facie* it appears that the documents as produced alongwith application exhibit 22 are prepared after institution of the suit.

6. It is well settled that if an application under Order 41 Rule 27 is filed, the appellate court may postpone consideration of the said application till hearing of the appeal and should take up the same for consideration at the time of hearing of the appeal on merits so as to find out whether the evidence sought to be adduced is relevant and bearing on the issues involved. Thus, the lower appellate court shall consider the application exhibit 22 at the time of final hearing of the appeal and both the sides are at liberty to substantiate their contention in respect of the documents sought to be produced as an additional evidence by way of filing application exhibit 22. Hence the following order:

ORDER

- I. The Writ Petition is hereby partly allowed. No costs.
- II. The order dated 07.03.2017 below exhibit 22 in R.C.A. No. 92 of 2013 passed by Adhoc District Judge-3, Aurangabad, hereby quashed and set aside.
- III. The lower appellate court shall consider the application exhibit 22 at the time of final hearing of R.C.A. No. 92 of 2013, on its own merits, after hearing both the parties.
- IV. The Writ Petition is accordingly disposed of.

(V. K. JADHAV, J.)

vsm/