

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14535 OF 2017

GANESH PRABHAKAR SONWANE AND ANOTHER
VERSUS
ASHOK LAXMINARAYAN ZAWAR AND OTHERS

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Advocate for Petitioners : Mr. Wani Girish V.

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CORAM : V. K. JADHAV, J.
DATED : 5th MARCH, 2018

PER COURT:-

1. The petitioners-original defendant Nos. 8 and 9 have challenged the order passed by the learned 5th Joint Civil Judge, Senior Division, Jalgaon below Exh.137, 138 and 140 in Special Civil Suit No. 141 of 2006.

2. The respondent No.1-plaintiff has filed an application Exh.137 for permission to produce on record the certified copy of the sale deed bearing No. 785 of 1966 and 786 of 1966 respectively. It is the specific contentions raised by the respondent-plaintiff that the said documents were received by him after completion of his evidence. The petitioners have strongly resisted the said application on the ground that the production of documents sought at the belated stage and that too after cross examination of the plaintiff is over. It appears that so far as the aforesaid sale deeds are concerned, which the respondent plaintiff was intended to produce on record, the execution and existence of the same

is not in dispute. I find no fault in the order passed by the trial court below Exh. 137 dated 30.10.2017.

3. The respondent-plaintiff has thereafter filed an application Exh.138 seeking permission to lead secondary evidence in respect of the aforesaid sale deeds. The original sale deeds were in possession of the mother of respondent-plaintiff, however, she is no more and it is thus difficult for the plaintiff to produce the original sale deeds. The trial court while allowing application Exh.137 has observed that the execution and existence of the aforesaid sale deeds is not disputed and accordingly allowed to produce the documents. So far as the permission to lead secondary evidence vide application Exh.138 is concerned, the respondent-plaintiff though has not laid down foundation seeking permission to lead secondary evidence in support of those sale deeds, however, since the execution and existence of those documents is not disputed by the parties, the certified copies of the sale deeds are produced on record, the trial court has allowed application Exh.138. In the facts and circumstance of this case, I do not find any fault in the impugned order dated 30.10.2017 passed below Exh.138.

4. So far as the order passed below Exh.140 is concerned, those sale deeds are produced on record after examination and cross examination of the respondent-plaintiff is over. In terms of order below Exh.140, the trial court has permitted the respondent-plaintiff for his re-

examination. I do not find any fault in the impugned order passed below Exh.140, since the petitioners will also get an opportunity to cross examine the respondent-plaintiff to the extent of his re-examination. However, it appears that the learned Judge of the trial court has not specifically stated in the order passed below Exh.140 that re-examination of the plaintiff is restricted to the extent of aforesaid sale deeds produced on record for which the permission is granted to lead secondary evidence and nothing more than that. In that way, the respondent plaintiff will not remain in a position to make an attempt to fill up the lacunae. With these observations, writ petition can be disposed of.

5. The writ petition is hereby dismissed to the extent of the order passed below Exh.137 and 138 respectively in Special Civil Suit No. 141 of 2006.

6. So far as the order passed below Exh.140 is concerned, the same is modified to the extent that the plaintiff is permitted for re-examination to the extent of sale deeds bearing Nos. 785 of 1966 and 786 of 1966 and the petitioners are permitted to cross examine the plaintiff to the extent of the aforesaid re-examination.

7. Writ petition is accordingly disposed of.

(V. K. JADHAV, J.)