

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14258 OF 2017

CHINDHA TOTARAM PATIL AND OTHERS
VERSUS
LAXMAN PANDIT PATIL AND OTHERS

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Advocate for Petitioners : Mr. L.V. Sangeet h/f Mrs. M.L. Sangeet
Advocate for Respondent Nos. 1, 3 to 9: Mr. Paresh B. Patil
Advocate for Respondent No.2 : Mr. Somnath D. Nagode

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CORAM : V. K. JADHAV, J.
DATED : 9th JANUARY, 2018

PER COURT:-

1. Being aggrieved by order dated 15.11.2017 passed by learned Joint C.J.J.D. Chalisgaon below Exh.82 in R.C.S. No. 81 of 2013 and R.C.S. No. 61 of 2014, (it is consolidated trial of both the suits), the petitioners-original defendants preferred this writ petition.

2. The petitioners by filing application Exh.82 prayed for permission to lead secondary evidence in respect of sale deed dated 12.4.1978. The other side has strongly resisted the application by filing their say. It has been contended by the other side that the application has been filed at prematured stage as the evidence of defendant Nos. 1 to 7 is yet to be lead. The Trial court has disposed of the application Exh.82. Hence, this writ petition.

3. Learned counsel for the petitioners-original defendant Nos. 1 to 7

submits that the trial court has disposed of application Exh.82 merely relying upon the ratio laid down by this Court in the case of ***Karthik Gangadhar Bhat vs. Nirmala Namdeo Wagh and Anr, (Writ petition No. 11151 of 2017) decided on 3rd November, 2017.*** Learned counsel submits that even in the said cited case, in para 15, this Court has observed that the plaintiffs will be at liberty to lead such secondary evidence as they desire on both documents, and the trial court will consider whether that secondary evidence is sufficient to prove the documents in question and all questions as to admissibility and relevant are expressly kept open. Learned counsel submits that this Court in fact, in the aforesaid case, has held that for leading secondary evidence no leave is required to be obtained and the parties may lead the secondary evidence subject to its admissibility etc.

4. Learned counsel for the petitioners has placed reliance on the judgment of Supreme Court in the case of ***State of Rajasthan and Ors. vs. Khemraj and others, reported in (2000) 9 SCC 241***, wherein the Supreme Court has permitted the appellant to file an application seeking permission under Section 65 of Evidence Act to lead secondary evidence supported by a proper affidavit and giving full details to attract the provisions of Section 65 of the Evidence Act. Learned counsel submits that it is the case of the petitioners-original defendants that the original document has been lost and as such, the permission to lead secondary evidence in the form of certified copy of registered sale deed

be granted. Learned counsel submits that the petitioners have complied with the condition as contemplated under Section 65 of Evidence Act and as such, the Court is bound to grant leave to lead secondary evidence. However, instead of that the trial court has merely disposed of the application.

5. I have also heard learned counsel for the respondents. Learned counsel for the respondents submits that in view of ratio laid down by this court in the case of **Karthik Gangadhar Bhat (supra)** as referred by the trial court in the impugned order, application No.82 has been rightly disposed of. Learned counsel submits that the petitioners have filed an application Exh.82 at prematured stage. No interference is required.

6. On careful perusal of the ratio laid down by this Court in the case of **Karthik Gangadhar Bhat (supra)** relied upon by the trial court and further the ratio laid down by the Supreme Court in the case of **State of Rajasthan and Ors. (supra)** relied upon by learned counsel for the petitioners, it appears that application Exh.82 has been rightly submitted by the petitioners. The petitioners have filed the said application Exh.82 in R.C.S. No. 61 of 2014 instituted by them. Both the suits are consolidated for hearing by the orders of the Court and as such, if the petitioners filed an application in their suit seeking permission to lead secondary evidence, in respect of the document, which is a certified

copy of registered sale deed, I do not think that the said application came to be filed at prematured stage. Learned Judge of the trial court has simply disposed of the application without making any observations as to whether the petitioners can lead secondary evidence or not. Thus, considering the peculiar facts of the case, I deem it appropriate to allow application Exh.82. Hence, the following order:-

O R D E R

- I. Writ petition is hereby allowed. No costs.
- II. The impugned order dated 15.11.2017 passed by the learned Joint Civil Judge, Junior Division, Chalisgaon, District Jalgaon below Exh.82 in R.C.S. No. 81 of 2013 is hereby modified and the application Exh.82 is allowed in terms of its prayer clauses.
- III. Writ petition is disposed of accordingly.

(V. K. JADHAV, J.)

rlj/