

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 2917 OF 2018

Suresh Govind Patil & Ors. ... Petitioners
Vs.
Savitribai Undir Patil & Ors. ... Respondents

Mr. Sanjay S. Patil, Advocate for the petitioners.
Mr. Jayesh Joshi, Advocate for the respondents.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 12th July, 2018.

P.C.:

This Writ Petition is directed against the order dated 30th November, 2017 passed by the learned trial Judge below Exhibit 222 requesting the Court to issue witness summons to the Manager, Bank of Maharashtra, Godbunder Road, Thane along with the document, i.e., Deed of Mortgage registered at No. 524 of 2015 with Sub-Registrar, Bhiwandi No. 1. This Application was moved by the petitioners/defendants. The plaintiff has filed the suit for removal of encroachment and possession. As per the plaintiff, the petitioners/defendants have constructed two houses – 30X35 sq.ft. and 20X15 sq.ft. thereby occupying approximately 1000 to 1300 sq.ft. area. The plot owned by the plaintiff is of approximately 10000 sq.ft. and he has mortgaged the plot with Bank of Maharashtra in the year 2015. The defendants want to bring the Deed of Mortgage on

record to show that they have not constructed the house on the plot of the plaintiff. The said Deed of Mortgage is a relevant document in support of the defence of the defendants. However, as this document was not disclosed earlier and plaintiff had no opportunity to give any explanation at the time of evidence, he is entitled to put up his explanation while arguing the matter and that may be considered by the Court while appreciating that document, if exhibited. The production summons for the documents can be issued and thereafter the defendantd may move an application calling upon the plaintiff to admit or deny the document. If the plaintiff admits the document, he may at that time put up his explanation about the said document. If the document is denied, the defendant is free to move an application for calling the witnesses to prove the said document.

2. The order of the trial Court is partly set aside to the extent of issuance of production summons of the documents to the Bank Officer.

3. Writ Petition is partly allowed.

(MRIDULA BHATKAR, J.)