

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2054 OF 2014

Madhukar Balu Chandan & Ors. .. Petitioners
VS.
Smt. Shantabai Gopal Chandan & Ors. .. Respondents

Mr. Prasad Kulkarni i/b. Ms Jui Nerurkar for Petitioners.
Mr. S. S. Kanetkar for Respondent Nos. 1 to 9.
Mr. S. G. Karandikar for Respondent Nos. 10 and 11.

CORAM : M. S. SONAK, J.
DATE: 26 MARCH 2018

P.C :

- 1] Heard the learned counsel for the parties.
- 2] The challenge in this petition is to the order dated 13th January 2014, by which, the learned trial Judge, has referred a document which was sought to be produced during the cross-examination of the petitioners for the opinion of the hand writing expert.
- 3] Mr. Kulkarni, the learned counsel for the petitioners submits that the document in question was never relied upon by any of the parties. He submits that even at the later stage, no leave was sought to produce this document. In such circumstances, the trial Court, was not at all justified in making the impugned order without even deciding whether such document ought to form a part of the record. Mr. Kulkarni submits that it was obligatory upon the plaintiffs

to have made reference to such document in their list of documents and produce such document along with the plaint before, the petitioners, could have been confronted with such document in the course of the cross-examination. Mr. Kulkarni submits that springing of such surprise is unknown to law and since, this is what the impugned order promotes, the same is required to be set aside.

4] Mr. Kanetkar and Mr. Karandikar, the learned counsel for the respondents submit that the requirement of producing original documents before the settlement of issues is specifically made inapplicable to documents produced for the cross-examination of the witnesses of the other party. They rely on the provisions in Order XIII Rule 1 (3) of CPC in support of this contention. They submit that since the petitioner no. 7, denies his signature on the document, the learned trial Judge, by the impugned order has referred the document for the opinion of the hand writing expert. They submit that there is absolutely no jurisdictional error in the impugned order.

5] Rather than decide the rival contentions at this stage, the interests of justice will be met if the relevancy of the document is kept open for decision by the trial court at an appropriate stage and further, the petitioners, are granted liberty to challenge the impugned order, in terms of section 105 of the CPC, if, ultimately,

the petitioners are aggrieved by the decree made by the learned trial Judge in the suit. Such course of action, will be in the interest of justice in the facts and circumstances of the present case.

6] This is a case for partition. At least *prima facie* Order XIII sub rule (3) of rule (1) of the CPC which provides that nothing in rule (1) shall apply to documents produced for the cross-examination of the witnesses of the other party, supports the contentions of the respondents. However, there is no necessity of expressing any final opinion on this aspect, at this stage.

7] For the aforesaid reasons, the present petition is not entertained. However, it is clarified that the issue of relevancy is kept open and further, liberty is also granted to the petitioners to challenge the impugned order dated 13th January 2014, if, ultimately, the petitioners, are aggrieved by the decree which may be made in the civil suit. Such a course is clearly permissible in terms of section 105 of the CPC.

8) This petition is disposed off in the aforesaid terms.

(M. S. SONAK, J.)