

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 6107 OF 2018

Rashmi Doijad & Ors.

... Petitioners

Vs.

Kashinath D. Teli & Ors.

... Respondents

Mr. Dhairyasheel Sutar, Advocate for the petitioners.

Mr. K.R. Tiwari a/w. Kiran Thakur and Sushila Gupta, Advocate for respondent No. 1.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 20th June, 2018.

P.C.:

Rule. Rule made returnable forthwith. By consent, the Petition is heard finally at the stage of admission.

2. In this Writ Petition, the order dated 3rd January, 2015 passed by Ad-hoc District Judge-5, Kolhapur in Regular Civil Appeal No. 125 of 2008 thereby rejecting Application Exhibit 42 is challenged. The Application Exhibit 42 was filed under Order 41 Rule 27 of Code of Civil Procedure for bringing additional evidence at the Appellate Stage. The respondent no. 1/plaintiff has filed the suit in respect of plot claiming that he has undivided interest in that plot along with his three brothers, i.e., defendant nos. 1 to 3. The legal heirs of one of the brothers have sold the plot to present petitioners, who are

strangers and defendant nos. 4 and 5. The suit is decreed in favour of the plaintiff/respondent no. 1 against which the stranger, i.e., petitioners have filed the Appeal. In the said Appeal, the petitioners have moved an application for bringing the evidence on record under Order 41 Rule 27 of Code of Civil Procedure. It is prayed that Exhibits 66 and 74 are the extracts of Plot Distribution Register Extracts maintained by Cooperative Housing Society Ltd., Pargaon, who is the owner of disputed plot. The said application was rejected on the ground that the petitioners were not diligent in producing and calling those documents.

3. The learned counsel for petitioners has submitted that these two documents are necessary on record to show that it was a joint Hindu property but the transferer was the sole owner of the impugned plot. He submitted that there is some manipulation in the register.

4. The learned counsel for the respondent no. 1/original plaintiff submitted that the certified copies of the documents Exhibits 66 and 74 which are called for, are already on record. The petitioners ought to have called the original documents, i.e., Plot Distribution Register

before the trial Court.

5. I have taken a note that the suit is decreed on 31st January, 2008 and this Application Exhibit 42 was moved on 7th October, 2014. There is inordinate delay in filing this Application. However, as the certified copies are before the Court and they are exhibited as 66 and 74 and the petitioners claim that there is fraud which is transpired to them after the filing of Appeal. In the Application Exhibit 42 in paragraphs 9 and 10, the petitioners have pleaded that the fraud is by fabricating original register. It is also to be noted that such fraud is not pleaded by the petitioners by amending the memo of Appeal, however, the fraud can be pleaded any time once it is noticed. I allow this Application for production of original register and pages of Exhibit 66 and 74 only are to be seen by the Appellate Court. The prayer of issuing the summons for witness for recording his testimony by way of additional evidence is rejected. The Appellate Court will take into account the time gap between the filing of appeal memo and Application. The order passed by the Appellate Court is set aside to the extent of production of documents only. Accordingly, the summons for production of impugned register of Exhibits 66 and 74 be issued.

6. Rule made absolute in above terms.
7. Writ Petition is disposed of.

(MRIDULA BHATKAR, J.)