

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10128 OF 2016

1. Shri Uttareshwar Balwant Sopal (*Since Deceased*),]
Through LR. :]
1-A. Shri Shivaprasad Uttareshwar Sopal]
Age : 45 years, Occ. Service,]
R/of 2511, Ganesh Road, Barshi,]
Dist. Solapur.]
1-B. Smt. Pravina Nandkumar Honrao,]
Age : 55 years, Occ. Service,]
R/of Navi Peth, Solapur.]
1-C. Smt. Shradha Umesh Gavare,]
Age : 52 years, Occ. Service,]
R/of Karad Road, Pandharpur,]
Dist. Solapur.]
1-D. Smt. Bharati Vishwanath Dulange,]
Age : 50 years, Occ. Housewife,]
R/of Jodbhavi Peth, Solapur.]
1-E. Smt. Aarti Milind Sakhare,]
Age : 50 years, Occ. Household,] Petitioners /
R/of Datta Peth, Karmala, Dist. Solapur.] (Org. Defendants)

Versus

1. Abdul Rashid Mahamad Hasan Jikre,]
(Since Deceased), through LR.:]
1-A. Nasir Abdul Rashid Jikare,]
Age : 60 years, Occ. Business,]
R/of 2549/2, Latur Road, Barshi,]
Dist. Solapur.]

Respondent No.1 for himself and as	]
a Power of Attorney Holder of	]
Respondent Nos.2 to 5.	]
2. Maksud Abdul Rashid Jikare,	]
Age : 58 years, Occ. Business	]
3. Manjur Abdul Rashid Jikare (Since Deceased),	]
Through LRs.:-	]
3a. Shafin Manjur Jikare,	]
Age : 46 years, Occ. Housewife.	]
3b. Aafrin Manjur Jikare,	]
Age : 27 years, Occ. Education.	]
3c. Aasma Manjur Jikare,	]
Age : 26 years, Occ. Education.	]
3d. Reshma Manjur Jikare,	]
Age : 23 years, Occ. Education.	]
3e. Mohammad Manjur Jikare,	]
Age : 18 years, Occ. Education.	]
All residents of 2549/2, Latur Road,	]
Barshi, Dist. Solapur.	]

.... Respondents /
(Original Plaintiffs)

Mr. S.D. Thokade for the Petitioners.

Mr. Dadhichi S. Mhaispurkar for Respondent Nos.1 and 3a to 3e.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 10TH JANUARY 2018.

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard finally, at the stage of admission itself, by consent of Mr. Thokade, learned counsel for the

Petitioners, and Mr. Mhaispurkar, learned counsel appearing for Respondent Nos.1 and 3a to 3e.

2. By this Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 22nd February 2016 passed by the learned District Judge-1, Barshi, below “Exhibits-60” in Civil Appeal No.173 of 2014. The said application was moved before the First Appellate Court by the Petitioners herein, under Order 41 Rule 27 of C.P.C., for permission to produce certified copy of the Sale Deed dated 13th October 2000.

3. It is submitted by learned counsel for the Petitioners that, the Petitioner-Original Plaintiff has filed the Suit for injunction, bearing Regular Civil Suit No.143 of 1999, restraining the Respondents-Original Defendants from causing obstruction to the construction of the building, as per the building permission issued by the Competent Authority. In the said Suit, Respondents have filed written statement and counter-claim claiming that the 'Sale Deed' dated 31st December 1997, executed by the original owner Vallabhdas C. Dale in favour of the Petitioner-Plaintiff is null and void and not binding on their rights. In the said Suit, both the parties adduced oral and documentary evidence in the Trial Court and thereafter, the Trial Court has decreed the Petitioner-Plaintiff's Suit partly and restrained the Respondents-Defendants from causing

obstruction and interference in the possession of the Petitioner in the suit property. At the same time, the counter-claim of the Respondents was also allowed and it was held that, the Sale Deed dated 31st December 1997 is not binding on the Respondents.

4. As per the Petitioner-Plaintiff, in his Suit, the Respondents have raised the issue of identification of the suit property. In fact, separate portions of the same property were purchased by the Petitioners and Respondents at different times. Sub-division of the suit property is also made with the consent of the parties and separate City Survey numbers were given to their respective properties. Therefore, there is no concern of the Petitioners or Respondents with the properties of each other. However, as the Respondents have claimed the property of the Petitioners on the basis of this Sale Deed, it is necessary to ascertain the intention of the Vendor. Recently, the Petitioners came to know about execution of one Sale Deed by the original owner Vallabhdas C. Dale and Anilkumar V. Dale in favour of Bhagwant Sahkari Puravatha Mandali Limited, Barshi, on 13th October 2000. Petitioners have obtained the certified copy of the said Sale Deed on 20th October 2015. The said document was not available with the Petitioners at the time of trial and they were also not knowing about the same. Therefore, the Petitioners requested that, they may be granted permission to produce the certified copy of the said Sale Deed.

5. This application came to be resisted strongly by the learned counsel for the Respondents and as held by the Appellate Court, rightly so. In the first place, the relevancy of the said Sale Deed is not at all explained or proved and, secondly, it is sought to be produced at a very belated stage. It is pertinent to note that, the alleged Sale Deed is executed in the year 2000, more particularly on 13th October 2000. The examination-in-chief of the Petitioner was recorded six years thereafter on 11th August 2006 vide Exhibit-97. Subsequent thereto, the evidence of the original owner/vendor Vallabhadas C. Dale, as 'Witness No.2' for the Petitioner, also came to be recorded on 20th April 2009. Thereafter, Suit is decided in 2014. The Appeal is pending since 2014 and at the stage of its hearing, in the year 2016, the Petitioners have preferred this application for leading additional evidence, that too, when the evidence was led before the Trial Court of the Petitioner and his witness - the Vendor Vallabhadas C. Dale, the said Sale Deed was very much available to the Petitioners. However, the Petitioners have not produced the same at that time and now, when the Appeal is fixed for final hearing in the year 2016, the Petitioners want to produce the same and then in order to prove that Sale Deed, the Petitioners intend to make an application for remand of the matter, so that the oral evidence can be led. This is indirectly putting the case at the initial stage itself. The Suit is, admittedly, filed in the year 1999; that means, after about 20 years.

Petitioners have filed this application for production of additional evidence. No explanation is given for such delayed production of the document; especially when, the document was in existence since last about 19 years. The relevancy of the document, as stated above, is also not explained. Apart from that, the Appellate Court can decide the Appeal completely and effectually even without the production of such Sale Deed. Therefore, as the intention of the Petitioners clearly appears just to protract and prolong the hearing of the Appeal, the Appellate Court was justified in dismissing the said application. Hence, there is no merit in this Writ Petition. The Writ Petition, therefore, stands dismissed.

6. Rule is discharged.

7. Parties to act on the authenticated copy of this order.

[DR. SHALINI PHANSALKAR-JOSHI, J.]