

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5064 OF 2018

Bhagwan Nathoba Mangde & Anr.

...Petitioners

Versus

Haribhau Kerba Mangde & Ors.

...Respondents

.....
Mr.Dilip Bodake for the Petitioners.

Mr. A.V. Borwankar for Respondent Nos. 1 to 4.

.....
CORAM: MRS.MRIDULA BHATKAR, J.
DATED: JULY 13, 2018

P.C. :

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

2. This Petition invoking the Writ Jurisdiction of this Court under Article 227 of the Constitution of India is filed wherein the order dated 12th February, 2018 passed by the learned 5th Jt. Civil Judge, Junior Division, Pune thereby rejecting the application below exhibit 304 in Regular Civil Suit No. 2660 of 1988 is challenged.

3. The respondents, who are the original plaintiffs, have filed a Regular Civil Suit No. 2660 of 1988 for declaration, injunction and possession. The plaintiffs' evidence is over. The petitioners, who are the original defendant Nos.2 and 3, moved an application for leading secondary evidence in respect of measurement map bearing No. 4230 and the report dated 31st May, 1982 prepared by Taluka Inspector of Land Records Read (T.I.L.R.), Pune. The learned Judge of the trial Court has rejected the said application. Hence, this Writ Petition.

4. The learned Counsel for the petitioners has submitted that they have produced a certified copy of T.I.L.R. map, which is already on record. He has further submitted that defendant Nos. 2 and 3 have also moved an application for summons to Tahsildar and production of the original map. However, the Office of the Tahsildar informed that the measurement map, report and documents are misplaced during shifting of the office. Therefore, defendant Nos. 2 and 3 moved an application seeking permission to tender secondary evidence.

5. The learned Counsel for the respondents while opposing this Petition, has submitted that the said map is not relevant, it shows some other property. He has further submitted that the learned Judge of the trial Court has rightly considered the authenticity and genuineness of the said report, as the original record is misplaced.

6. Heard submissions. Perused impugned order and the application. The appreciation of the document and its relevancy is other issue and for permission to lead secondary evidence entirely different parameters are applied. From submissions and the records, it appears that defendant Nos. 2 and 3 have laid foundation to tender secondary evidence i.e., a certified copy of the map, which is already on record. The authenticity of the said map is a matter of appreciation and it is always kept open. The order dated 12th February, 2018 passed by the learned 5th Jt. Civil Judge, Junior Division, Pune is hereby set aside. Writ Petition is allowed. Rule made absolute in terms of prayer clause (b). The application moved by defendant Nos.2 and 3 for leading secondary evidence is allowed.

(MRIDULA BHATKAR, J.)