

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13109 OF 2016

Hanmant Eknath More & Ors.	 Petitioners
V/s.	
Vasant Balwant Tekale (Since Deceased),	
Through LRs :-	
Shrikant Vasant Tekale & Ors.	 Respondents

Mr. Pradeep S. Gole for the Petitioners.

Mr. Shailendra S. Kanetkar for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 14TH MARCH 2018.

P.C. :

1. Heard Mr. Gole, learned counsel for the Petitioners, and Mr. Kanetkar, learned counsel for the Respondents.

2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 14th July 2016 passed below the application “Exhibit-117” and the order dated 12th August 2013 passed below the application “Exhibit-56” in Regular Civil Suit No.135 of 2010.

3. Both the applications were preferred by the present Petitioners, who are the Defendants before the Trial Court, calling upon the

Respondents-Plaintiffs to produce the original 'Memorandum of Partition' dated 25th May 1954; otherwise, to exhibit the duplicate photocopy of the said 'Memorandum of Partition' produced by the Petitioners. By its detailed order, the Trial Court has rejected the said application at “Exhibit-56” on 12th August 2013. Again, another application at “Exhibit-117” was filed for permission to lead secondary evidence and the Trial Court has rejected the said application also.

4. In my considered opinion, when the earlier order was not at all challenged by the Petitioners and there is also no evidence to show that the Respondents are having the original 'Memorandum of Partition', then, such order passed by the Trial Court cannot be disturbed. Though learned counsel for the Petitioners has placed reliance on the admission given by the Respondents in Regular Civil Suit No.236 of 2005, the Judgment of the said Suit is produced on record by learned counsel for the Respondents, which shows that, in the said Suit also, the photocopy of the 'Memorandum of Partition' was produced and not the original as such and that 'Memorandum of Understanding' was not taken into consideration, nor exhibited. As per the statement made by learned counsel for the Respondents, the Appeal preferred against the said Judgment, bearing Regular Civil Appeal No.111 of 2008, is also dismissed by the District Court vide order dated 22nd October 2012.

5. In such situation, there hardly remains any substance in the submissions made by learned counsel for the Petitioners. Therefore, the Writ Petition stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]