

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13518 OF 2017

Govind Vinayak Sonar (decd) through Radha
Govind Sonar and others ... Petitioners
Vs.
C. M. Shrivastava (decd) through Ashok
Kamaprasad Shrivastava and another ... Respondents

Mr. Dharendra D. Singh for Petitioners.
Ms Aditi Naikare i/b. Mr. Pradeep J. Thorat for Respondents.

CORAM : R. G. KETKAR, J.
DATE : OCTOBER 04, 2018

P.C. :

Heard Mr. Singh, learned Counsel for the petitioners and
Ms Naikare, learned Counsel for the respondents at length.

2. This Petition takes exception to the ruling given by the learned trial Judge on the objection raised by the petitioners, hereinafter referred to as 'defendants'. The defendants had filed application on 29.09.2017 inter alia praying for issuing witness summons to City Survey Office, Andheri for producing the record of C.T.S.No.139, 139/239 to 241 of Village Majas, Taluka Andheri, MSD (for short 'said land') and to give deposition thereon regarding right of ownership, lease and other rights of the said land. In pursuance thereof, Sopan Bhagwan Khedkar working as Maintenance Surveyor, City Survey Office, Andheri (West), Mumbai is examined as D.W.2 by the defendants. During the course of cross-examination, Advocate for the plaintiff showed document at exhibit-39, which is a certified copy of Enquiry Register issued by the City Survey Office. At that stage, Advocate for the defendants objected to the question posed by the plaintiff's Advocate. The learned trial Judge has overruled the objection raised by the defendants by observing that the

Advocate for the plaintiff wants to show the certified copy of the Enquiry Register at exhibit-39, which is also in respect of the land involved in the matter. The Enquiry Register is issued by the City Survey Office, Andheri. This being a certified copy of the public record, the witness i.e. D.W.2 is competent to state whatever record and recitals therein. Though the plaintiff has not called any other witness from the office of the City Survey to prove the document at exhibit-39, which is also otherwise admissible in evidence as a certified copy of the public record, there is no bar to show the document which is pertaining to the office of the witness. It is against this ruling, the defendants have instituted the present Petition.

3. In support of this Petition, Mr. Singh submitted that plaintiff had produced Register of Enquiry at exhibit-39. Defendants have cross-examined the plaintiff. He has taken me through the cross-examination of plaintiff's witnesses. He submitted that plaintiff made it clear that he does not intend to examine any witness from either Municipal Corporation of Greater Mumbai or City Survey Office, Andheri. Instead of proving the contents of exhibit-39 by examining his own witness, the plaintiff's Advocate has shown the Enquiry Register at exhibit-39 to D.W.2. D.W.2 was summoned only for giving evidence in respect of property cards of C.T.S.No.139, 139/239 to 241 and for deposing only in respect of these documents. In other words, the question posed by the plaintiff's Advocate ought not to be allowed as the witness was summoned only for a limited purpose. The plaintiff by way of this short cut method wants to prove the contents of exhibit-39 through evidence of D.W.2, which is not permissible. He, therefore, submitted that the ruling given by the learned trial Judge deserves to be set aside.

4. On the other hand, Ms Naikare supported the impugned order. She submitted that in the application made by the defendants, they have

prayed for issuing witness summons to City Survey Office, Andheri **for production of the record of the said lands and for giving deposition thereon regarding right of ownership, lease and other rights of the said land.** In pursuance thereof, D.W.2 has produced the record including property cards of C.T.S.No.139, 139/239 to 241. The learned trial Judge has also given the said witness time to refresh his memory, which will not amount to taking that witness by surprise. She, therefore, submitted that no case is made out for interfering with the impugned order.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that the plaintiff has produced certified copy of Enquiry Register at exhibit-39 and the same is already forming part of the record of the trial. It is also not in dispute that Enquiry Register at exhibit-39 is issued by the City Survey Office at Andheri. A perusal of the application dated 29.09.2017 made by the defendants also shows that witness summons was sought for production of record of the said land for giving deposition regarding right of ownership, lease and other rights of the said land. It is in that context, the plaintiff's Advocate had put question to the said witness. For the reasons recorded in the impugned ruling given by the learned trial Judge, referred hereinabove, I do not find that the learned trial Judge has committed any error in overruling the objections raised by the defendants. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioners, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R. G. KETKAR, J.)