

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3955 OF 2018

MAJID KHAN PATHAN KHAN PATHAN
VERSUS
ATAUL REHEMAN FAZALE RAHEMAN THROUGH LRS SHAFIYABEE
ATAUL REHEMAN AND OTHERS

WITH
WRIT PETITION NO.3974 OF 2018

MAJID KHAN PATHAN KHAN PATHAN
VERSUS
AHMED KHAN MEHMOOBKHAN

WITH
WRIT PETITION NO.4797 OF 2018

MAJID KHAN PATHAN KHAN PATHAN
VERSUS
AZIJUL RAHEMAN FAZALE RAHEMAN AND OTHERS

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Advocate for the Petitioners : Shri Thombre S.G.
Advocate for the Respondents : Shri Shaikh Ashpak Taher Patel.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 15th February, 2019

Per Court:

1 In all these three petitions, the Petitioners are challenging identical orders dated 13.03.2018 passed below the applications Exhibit 50 in RCS No.47/2012, Exhibit 71 in RCS No.46/2012 and Exhibit 77 in

RCS No.31/2012.

2 I have considered the submissions of the learned Advocates for the respective sides.

3 These Petitioners, who are the original Plaintiffs in these three suits, have prayed for impounding the original Bharana Pavati (Deposit Receipt), Taba Pavati (Possession Receipt) and agreement to sell.

4 It is now submitted across the Bar that the prayer for impounding the original Bharana Pavati and Taba Pavati has been erroneously put forth and the Plaintiffs are not pressing the said prayer. Even otherwise, since the original Bharana Pavati and Taba Pavati are not on record, in my view, the Trial Court has rightly rejected the said applications to that extent.

5 The only issue that survives is that the Plaintiffs claim that there is an original agreement to sell on record in all these three suits. These original agreements to sell need to be impounded and no orders are passed with regard to these agreements.

6 The learned Advocate for the Defendants submits that firstly, he is instructed that the original agreement to sell is not on record. Secondly, even otherwise, no prayer was put forth by the Plaintiffs to impound the agreement to sell.

7 The learned Advocate for the Plaintiffs submits that the affidavit dated 30.04.1997 is the agreement to sell.

8 I find that rather than going into the controversy as to whether, the agreement to sell is termed as an affidavit in the Trial Court proceedings, it would be appropriate to permit these Plaintiffs to file a specific application only with regard to the agreement to sell for making a prayer to impound the document, if the original is placed on record.

9 As such, these three Writ Petitions are disposed of without causing any interference in the impugned orders.

10 In the event, the Petitioners/ Plaintiffs move an application for impounding the original copy of the agreement to sell in these proceedings on or before 28.02.2019, the Trial Court would consider the said application on its own merits. If the said application is not filed on or before the said date, these Petitioners would be liable for the forfeiture of their right to file such an application.

11 Since the suits are about 07 years old, the Trial Court would endeavour to decide the said suits on or before 30.06.2020.