

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

18 WRIT PETITION NO.10239 OF 2014

GINYANBAI SONERAO SALUNKE AND ANOTHER
VERSUS
SONERAO SOPANRAO SALUNKE AND OTHERS

...
Advocate for Petitioners : Mr. Kedar Balbhim R.
Advocate for Respondent No.1: Mr. Deshpande Dhananjay P.

...
CORAM : V. K. JADHAV, J.
DATED : 16th DECEMBER, 2019

PER COURT :-

1. Learned counsel for the petitioners submits during pendency of this writ petition, petitioner No.1 died. Learned counsel for petitioners, on instructions, submits that petitioner No.2 is the sole legal heir of petitioner No.1. Learned counsel has also filed a *pursis* to that effect along with death certificate of petitioner No.1. The same is taken on record.
2. In view of the above, delete the name of petitioner No.1 from the array of the petitioners forthwith.
3. Heard finally with consent at admission stage.
4. The respondent No.1 – plaintiff has instituted the suit bearing Regular Civil Suit No.142 of 2005 for recovery of possession of the suit land before the learned Civil Judge, Senior (SD), Latur. After completion of the pleadings by contesting parties, the trial Court has framed the issues and

even the trial has also been commenced. After cross-examination of the petitioner – original defendant Nos. 1 and 2, have filed an application Exhibit-113 to exhibit the document dated 11.05.1993. The said document was produced before the Court along with written statement. By impugned order dated 31.07.2013, the 8th Joint Civil Judge, Junior Division, Latur, by order below Exhibit-113 in RCS No.147 of 2005, rejected the said application. Hence, this writ petition.

5. Learned counsel for the petitioner submits that the respondent – original plaintiff has specifically referred the said document in his pleadings and it is his case that the said document dated 11.05.1993 is a false, fabricated and bogus partition deed. Learned counsel submits that in terms of the said pleadings, the issues came to be framed at Exhibit-35 and in terms of issue No.1, the burden is casted on the plaintiff to prove that the partition deed dated 11.05.1993 is illegal, fake, fabricated and bogus, so it is null and void. Learned counsel submits that when the petitioner - original defendant No.1 has examined herself on oath before the court, she was cross-examined at length by the respondent/plaintiff and even she was suggested that the signature of respondent – plaintiff was obtained on the blank stamp papers dated 11.05.1993 by using force. In term of burden of issue no.1 casted on respondent/plaintiff, the trial Court should have exhibited the

said document.

6. Learned counsel for the respondent - original plaintiff submits that the order passed by the trial Court is proper correct and legal. The petitioner defendants have not duly proved the said document by examining the attesting witnesses. In view of the same, no interference is required. There is no substance in this writ petition. The writ petition is liable to be dismissed.

7. On going through the pleadings and issues framed on the basis of pleadings, it appears that the trial Court has framed issue No.1 in the following manner:

“1. Does not plaintiff prove that the partition deed dated 11.05.1993 is illegal, fake, fabricated and bogus, so it is null and void ?

8. Furthermore, on perusal of the plaint particularly Paragraph No.3, the respondent - plaintiff has specifically pleaded that the signatures have obtained on the blank stamp papers and the defendants have prepared false, fabricated and bogus partition deed dated 11.05.1993, showing the partition of land between the plaintiffs and defendant nos. 1 and 2. It thus appears that the respondent - plaintiff has not denied his signature on the said document. It appears that on the basis of his pleadings, issue no.1 is framed casting burden on the respondent - plaintiff to prove that the said partition deed

dated 11.05.1993 is illegal, fake, fabricated and bogus. In view of the same, since the said original document is placed along with the pleadings before the trial Court and if the said document is referred by the witness in the examination-in-chief before the Court Commissioner, who has recorded the evidence, the trial court should have exhibited the said document.

9. It is needless to say that the admission and consideration of the said document in evidence is subject to the discharge of burden of issue no.1 by the respondent plaintiff. In view of the same, I proceed to pass the following order:

ORDER

(I) The writ petition is hereby allowed.

(II) The impugned order dated 31.07.2013 passed by the 8th Joint Civil Judge, Junior Division, Latur below Exhibit-113 in RCS No.147 of 2005 is hereby quashed and set aside.

(III) The application Exhibit-113 is hereby allowed in terms of its prayer clause.

(IV) The writ petition is accordingly disposed of.

(V. K. JADHAV, J.)