

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13653 OF 2018
(Madhav s/o Bapu Ghabade (Pathak) and others Vs. The State of
Maharashtra and others)

Mr.D.A.Bide h/f Mr.P.G.Tambade, Advocate for the petitioners.
Mr.N.T.Bhagat, AGP for respondent Nos. 1 and 2.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 17/01/2019

PER COURT :

1. The petitioners/plaintiffs are aggrieved by the order dated 09/10/2018 passed by the Trial Court thereby rejecting application Exh.215 filed by the plaintiff in RCS No.44/2010. The plaintiffs sought leave of the Court for examining a Sub-Registrar, Kallam as a witness alongwith a registered document bearing No.1200/1981. This request was put forth after all the litigating sides had led evidence, the final arguments were concluded and the plaintiffs had opened arguments in rebuttal.

2. Contention of the learned Advocate for the petitioners is that the certificate issued u/s 38-E of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (For short, the Act) was sought to be declared as null and void by prayer clause No.2 in the plaint. It is,

therefore, contended that evidence is required to be led that the certificate u/s 38-E is a bogus document, is illegally issued and be declared as null and void.

3. I find that the plaintiffs, though have stated that the said certificate as been issued illegally, there are no pleadings in the plaint as to whether the protected tenant was issued with the said certificate by following the procedure laid down under the Act. The number of the certificate is also not mentioned. The plaintiffs proceeded with the suit and have led evidence. They have also closed their evidence. The defendants then led evidence and thereafter tendered a closing *purshis*. Even while cross examining the defendants, the issue of the certificate under Section 38-E was not put forth.

4. Vide Exh.215, the plaintiffs have contended that the Section 38(6) ownership certificate bearing No.1200/1981 is a false certificate. The Sub-Registrar Office informed the plaintiffs that no certificate bearing No.1200/1981 is in existence in the Office of the Sub-Registrar. Since no such certificate is on record, the Trial Court would not be required to decide the evidentiary value of any such certificate.

5. Defendant Nos. 3 to 7 have also stated that the certificate u/s 38-E was a subject matter of an earlier suit bearing RCS No.404/1987. The defendants claimed that the said certificate was proved in RCS No.404/1987. The number of the certificate is 2395/1981 registered on 16/04/1981 and there is no such certificate bearing No.1200/1981 in existence.

6. Considering the above, I do not find that the impugned order could be termed as being perverse and erroneous. This petition, being devoid of merit, is therefore, dismissed.

(Ravindra V.Ghuge, J.)