

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.14980 OF 2019

SURYABHAN ANANDA KALANE AND OTHERS

VERSUS

**THE CHAIRMAN SHRIGONDA SAHAKAR SAKHAR KARKHANA LTD AND
OTHERS**

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Advocate for Petitioners : Mr.Sanket S. Kulkarni

AGP for Respondents:

**Advocate for Respondent Nos.1 to 3 : Mr.V.D.Hon
Sr.Counsel i/b Mr.A.V.Hon**

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CORAM : RAVINDRA V. GHUGE, J.

DATE : 12th December, 2019.

PER COURT :-

1. I have considered the submissions of the learned Advocate for the petitioners, the learned senior Advocate along with learned Advocate Mr.A.V.Hon on behalf of respondent No.1 to 3. Notice in this matter is yet to be issued.

2. The petitioners, who are original plaintiffs

in Regular Civil Suit No.284/2012, are aggrieved by the order dated 05/10/2019 by which, the Trial Court has rejected the Exhibits-62 and 63, preferred by the petitioners. Applications Exhibits-62 and 63 were filed for permitting the plaintiffs to adduce additional evidence, at a stage when the entire recording of oral evidence had concluded, and for leading secondary evidence with regard to a lease deed dated 01/10/1935.

3. The Trial Court has rejected both the applications vide the impugned orders dated 05/10/2019 by concluding that the matter is 7 years old, recording of oral evidence has concluded long ago, the stage is for advancing final arguments and lack of jurisdiction.

4. I have perused the pleadings of the plaintiffs in the 2012 suit, which clearly indicate in paragraph No.3 that there are foundational pleadings as regards the lease deed dated 01/10/1935. It is also stated that the original lease deed was produced in an earlier litigation between the parties in Regular Civil

Suit No.532/1994. The said suit was decreed and R.C.A.No.378/2001 was filed by the defendants, which was also dismissed. Second Appeal No.1699/2005 filed by the defendants was also dismissed by this Court. As such, the decree in Regular Civil Suit No.532/1994 attained finality.

5. The petitioners learnt that the party, which had produced the original lease deed dated 01/10/1935 before the Trial Court in the 1994 suit and which was proved in evidence, was withdrawn from the record and proceedings of the said suit with the leave of the Trial Court. The said litigant subsequently could not trace-out the original lease deed.

6. This Court has extensively dealt with the issue of secondary evidence in the matter of Shaikh Aftab Ahmed s/o Ahsikh Akhlaque Ahmed and another Vs. Bhimrao s/o Sandu Waghmare and others, Writ Petition No.8442/2019 (Aurangabad Bench), decided on 01/10/2019 and in the matter of Badrinarayan Gaurishankar Palasaniya, Deceased through his L.Rs. Vs. Omprakash

Sitaram Agrawal and another, Writ Petition No.13436/2019 (Aruangabad Bench), decided on 07/11/2019, whereby this Court has concluded that foundational pleadings are mandatory for leading secondary evidence or the parties have to lead evidence to first prove the existence of the original and then prove that the photo-stat or copy of the original is obtained from the same manufacturing process.

7. It appears from the submissions of the parties that the lease deed dated 01/10/1935 was proved in the 1994 suit. In this backdrop, I find that instead of the petitioners-plaintiffs following a circuitous route, could be in a advantageous position to seek certified copy of the evidence in which the original lease deed dated 01/10/1935 was proved and produce the copies of the judgment and decree in the suit as well as the judgments in the regular civil appeal and second appeal, which can be considered by the Trial Court while deciding the 2004 suit as the said documents are proved.

8. In view of the above, this petition is disposed off. Considering the request of the respondents that a time frame may be granted, I grant time to the plaintiffs to take the certified copy of the evidence by which, the original lease deed was proved, on/or before 15/01/2020 and subsequently produce the said evidence for reference purposes before the Trial Court on/or before 24/01/2020. Thereafter, the parties would advance their oral submissions which would be concluded on/or before 31/01/2020 and the Trial Court would deliver its judgment in Regular Civil Suit No.284/2012, on/or before 29/02/2020.

9. Needless to state, this Court has not made any observation about the merits of the matter and the Trial Court would decide the said suit on it's own merits.

(RAVINDRA V. GHUGE, J.)