

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.14392 OF 2019

BHAUSAHEB KONDAJI GITE AND ANOTHER

VERSUS

**KOTULESHWAR MAHADEO MANDIR TRUST KOTUL THROUGH THE
TRUSTEE AND OTHERS**

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Advocate for Petitioners : Mr.Vinod Y. Bhide

AGP for Respondent Nos.7, 8 and 9 : Mr.S.R.Yadav

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CORAM : RAVINDRA V. GHUGE, J.

DATE : 28th November, 2019.

PER COURT :-

1. The petitioners/original plaintiffs in Regular Civil Suit No.467/2008 are aggrieved by the order dated 19/11/2019 passed by the Trial Court, by which, application Exhibit-299 filed by the petitioners, seeking leave to lead evidence to prove four private documents filed after the final arguments have commenced, has been rejected.

2. I have considered the strenuous submissions of the learned Advocate for the petitioners. He has drawn my attention to the 9 grounds formulated in the memo of the petition. He contends that this Court had directed the Trial Court to decide Regular Civil Suit No.467/2008 on or before 31/08/2019, vide order dated 24/07/2019. Since the matter was already at the final argument stage on 31/07/2019, this Court reasonably expected the Trial Court to deliver a judgment after one month, on 31/07/2019.

3. Learned Advocate for the petitioners submits that the petitioners stumbled across four documents. Two are legal notices, both dated 13/10/1974 and office copies of two replies, both dated 27/10/1974. These documents have a direct impact on the case put-forth by the petitioners/plaintiffs. Therefore, an application Exh.294 was filed on 08/11/2019 and it was allowed by order dated 12/11/2019. In view thereof, the production of the private documents was permitted and an exhibit number 295 was issued only to the list of

documents and neither of the four documents were exhibited or even marked.

4. It is further submitted that as the defendants denied the four documents, Exh.299 has been rejected.

5. It is settled law, in view of the procedure and provisions applicable to trying of suits, that the original documents have to be filed along with the plaint/written statement as the case may be. If copies are filed, originals have to be filed before settling of the issues. Thereafter, documents can be filed only after the permission of the Trial Court. It is equally well settled that foundational pleadings as regards the documents have to be set-out in the plaint/written statement. This view is taken by this court in the Judgment delivered on 01/10/2019 at Aurangabad in **Writ Petition No.8442/2019 in the matter of Shaikh Aftab Ahmed s/o Shaikh Akhlaque Ahmed and another Vs. Bhimrao s/o Sandu Waghmare and others.**

6. An almost identical case was dealt with by

this Court at Aurangabad in the matter of **Badrinarayan Gaurishankar Palasaniya and others Vs. Omprakash Sitaram Agrawal and another in Writ Petition No.13436/2019, decided on 07/11/2019**, holding that if a document is suddenly brought before the Court for the first time after the trial is commenced or after the recording of oral evidence has concluded, it is extremely important for the Court to find out as to whether there are any foundational pleadings with reference to such document. This aspect is decisive for the fear of permitting a litigant to manufacture documents and produce them in the Court without there being any foundational pleadings and without there being any reference to such documents.

7. It is conceded by the petitioners that none of these documents find reference in their plaint or their oral evidence. None of these documents have been referred to in the entire trial of the suit. It is claimed that these documents of 1974 were suddenly found after 45 years when the suit was to be decided

within a time frame.

8. In the absence of foundational pleadings, in the absence of any reference to these documents in the evidence of any party to the suit and in the absence of any reference to these documents in any connected documents, production of such documents to be made admissible in evidence by leading evidence, cannot be permitted.

9. I find that the Trial Court has merely granted an exhibit number 295 to the list of documents. Arguments in rebuttal are posted tomorrow on 29/11/2019.

10. In light of the above, I do not find that the Trial Court has committed any error in refusing permission to the petitioners to lead evidence when there are no foundational pleadings in the plaint or their evidence before the Trial Court. Such four documents are practically foreign to the proceedings.

10. In view of the above, this petition is dismissed.

(RAVINDRA V. GHUGE, J.)

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