

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**CIVIL APPLICATION NO. 931 OF 2019
IN SECOND APPEAL NO. 807 OF 2017**

Ramesh Nagorao Kalyan ...Applicant

Versus

Subhash Nagorao Kalyan & Ors. ...Respondents

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Mr. A. G. Godhamgaonkar, Advocate for Applicant.

Mr. P. R. Katneshwarkar, Advocate for Respondents No. 1 & 2.

Mr. A. A. Fulfagar, Advocate for Respondent.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 17-01-2019.

ORAL ORDER :

01. Heard learned Advocate appearing for the applicant, who is the original respondent No. 1 in Second Appeal No. 807 of 2017 and the original plaintiff. Present application has been filed for production of documents, which the applicants have produced alongwith application, on record.

02. The applicants had filed R. C. S. No. 8 of 2003 and the subject matter of the suit was plot No. 7 admeasuring 72 feet East West and 50 feet North South

situated at village Naygaon, Dist. Nanded. In the said suit it was contended that the respondents No. 1 and 2 are making constructions in the suit property by encroaching upon it. The suit came to be dismissed by Judgment and decree dated 29.7.2004. He preferred R. C. A. No. 29 of 2004 before the learned District Judge-1, Biloli. The said appeal came to be allowed and his suit has been decreed by Judgment and decree dated 10.11.2017. Now, the original defendants No. 2 and 3 have filed the second appeal which has been now admitted. It is stated that in the said suit alongwith plaint he had filed NA permission in respect of survey No. 125 dated 10.10.1988 granted by Tahsildar Biloli, which was as per the lay out plan approved by the Assistant Director, Town Planning, Nanded. It is stated that it is not clear as to why and in what circumstances, those documents remained to be taken on record and not exhibited. Though the vendor defendant No. 1, who had the sold the said plot to the plaintiff was examined. It is also stated that DW-1 had specifically admitted that he had obtained necessary NA permission and got the lay out sanctioned. It is stated that a substantial question of law was framed by this Court while admitting the second appeal and it is in respect of identity of the plot. It is stated that these documents

would help while doing substantial justice between the parties to identify the property. No prejudice is going to be caused to the parties if they are to be taken on record.

03. Heard Mr. A. G. Godhamgaonkar Advocate for the applicants. Under the circumstance, it is not necessary to call upon the respondents to file any say. It will not be out of place to mention here that the learned Advocate has made submissions supporting the application. He has also drawn my attention to the relevant portions from the Judgments of both the Trial Courts in respect of the documents and the fact that NA permission was obtained and lay out was sanctioned.

04. The first and the foremost fact that is to be noted is that as per the present applicant these documents are already on record. Now, if they are not exhibited and the reason is not even known to the plaintiff, then it can not lie in the mouth of plaintiff that those documents are necessary for substantial justice. If the plaintiff was relying upon those documents efforts have been made to get them exhibited. If this application is considered under Order 41 Rule 27 of Civil Procedure Code, the reason contended in the application is not befitting in Rule

27(1)(a) or (aa) of Code of Civil Procedure. The learned Advocate appearing for the applicant has tried to rely on Order 41 Rule 27(1)(b) stating that even this Court can ask for a document. It is to be noted that the said situation is not contemplated when the documents as per plaintiff were already on record especially the document at Sr. No. 1 of Exh. A is stated to be on record. Here, in this case, the matter is in second appeal. There was no attempt to get that document proved or produced when the matter was before the first Appellate Court. Now, when the substantial question of law has been framed regarding the identity of the property, the present application has been filed. It being devoid of merits rejected.

[SMT. VIBHA KANKANWADI]

JUDGE

Dahibhate/-