

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1569 OF 2016

Mr. S.B. Gupta & Ors.

.....Petitioners

V/s.

Mr. Dashrath Shreepati Gilbile
(Decd) and Ors.

.....Respondents

APPEARANCES :

Mr. T.J. Kapre i/by. Mr. J.S. Kapre, Advocate for the
petitioners.

Mr. Ravi G. Shinde, Advocate for respondents no.4 to 6.

CORAM : SANDEEP K. SHINDE, J.

Friday, 28th June, 2019.

P.C. :

1. Heard learned Counsel for the parties.
2. Petitioners-plaintiffs' request to recall the
witness has been rejected by the learned Court on 11th
January, 2016 and hence this petition under Article

227 of the Constitution of India.

3. Petitioner instituted suit for specific performance of agreement dated 24th August, 1998 executed by the respondents-defendants in respect of land Survey No. 870/896 ("suit property" for short). Defendants would contend that, in lieu of suit property, land Survey No. 870, has been sold to the plaintiffs vide sale-deed dated 28th November, 2015 executed by Mahadu Gilbile-one of the defendants and thus prayed for dismissal of suit. Defendants would also assert that, by another writing, plaintiffs have acknowledged the sale-deed dated 28th November, 2015 executed in their favour in lieu of suit property. Obviously, affirmation of this stand needs to be proved by the defendants. After witness has been cross-examined, the plaintiffs seek to produce these two documents by recalling their witness no.1.

4. Evidently, these two documents would assist

in clarifying the evidence and lead to a just and effective adjudication. Additional evidence in the form of these two documents, sought to be produced will also assist the court in rendering the justice. The learned Judge declined to recall the witness in absence of conceivable and probable explanation for not producing these documents either while instituting the suit or while they examined witness no.1.

5. True that, there is no plausible explanation for such omission, however, production of these documents would not cause prejudice to the defendants, because it is their case that in view of these documents, plaintiffs have acknowledged and accepted, another piece of land in lieu of suit property. In fact, these documents would assist and lead to effective adjudication.

6. The impugned order is therefore set aside and plaintiffs are granted leave to recall and examine

witness no.1 only to the extent of providing these two documents and nothing more subject to cost of Rs.10,000/-. Petitioner shall deposit the cost in the trial Court within three weeks from the date on which this order is uploaded. It is clarified, the learned Judge shall appreciate the evidence of the witness who is recalled, in accordance with law, without being influenced by this order and shall also permit the defendants to withdraw the cost unconditionally, if applied for.

7. Petition is allowed and disposed of in the aforesaid terms.

(SANDEEP K. SHINDE, J)