

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2921 OF 2013

Brahma Shakti Singh Chauhan & Ors. ..Petitioners.
V/s.
Abhiman Mariba Kambnle & Ors. ..Respondents.

Mr.Amogh Singh I/b. Atul S.Singh for the petitioners.

Mr.GuG.Sadavarte for respondent Nos.1 & 2.

Mr.U.B.Nighot for respondent No.3.

CORAM : M.S.SONAK, J.

DATE : APRIL 3, 2019

ORAL JUDGMENT

Heard Mr.Singh, learned counsel for the petitioners,
Mr.Sadavarte, learned counsel for respondent Nos.1 and 2 and Mr.
Nighot, learned counsel for respondent No.3.

2. On March 14, 2019 this Court has made the following order :-

“ 1. Mr.Abhiman Kamble, Respondent No. 1 is present in person. He submits that his advocate G. Sadavarte is not well and therefore, not attending the Court today. He states that his advocate will positively attend the Court on the next date.

2. Accordingly place this matter on supplementary board on 3rd

April, 2019.

3. It is made clear that if on the next date, the respondent Nos. 1 and 2 or their advocate are not present, the matter will be taken on up for final disposal, since by order dated 21st March, 2013 itself it was made clear to the parties that the petition may be heard and disposed of finally at admission stage. S.O. to 3rd April, 2019.”

3. Accordingly, Rule. Rule, made returnable forthwith by consent of the parties and at their request.

4. Challenge in this petition is to the orders dated December 19, 2012 and February 6, 2013. The effect of the two orders is that the petitioners, who are the plaintiffs in S.C.Suit No.644/2009 has been precluded from producing compilation of documents as also re-examining himself in order to produce those documents.

5. Mr.Singh, learned counsel for the petitioners submits that the xerox copies of the documents were already on record, however, the certified copies were obtained by resort to Right to Information Act ('the RTI Act' for short). Mr.Singh submits that these documents are relevant, because, they establish the flow of title in favour of the society from whom the petitioners has acquired interest in the suit property. Mr.Singh submits that no prejudice would occasion to the respondents in case the two applications were to be allowed. He submits that in any case, the prejudice can always be compensated in terms of money.

6. Mr.Sadavarte, learned counsel for respondent Nos.1 and 2 defends the impugned order on the reasoning reflected therein. He submits that the documents in question are not at all relevant and in any case, the petitioners have not demonstrated diligence. He submits that the petitioners are builders / developers and the respondents are mere labourers. For all these reasons, he submits that this petition may be dismissed with costs.

7. The record indicates that the documents in question were already on record in the sense that xerox copies of those documents had been referred to in the earlier stage of the proceedings. The explanation furnished is that the certified copies of these very documents have been obtained under the RTI Act. According to me, this explanation explains their diligence.

8. In so far as the relevancy is concerned, it cannot be said at this stage that the documents are irrelevant as to block their admission at this very stage.

9. No doubt, as contended by Mr.Sadavarte, the issue relating to validity, genuineness, applicability and binding nature of the documents is bound to arise. All such issues can be expressly kept open. In addition, leave can always be granted to the petitioners to re-examine himself simply in the context of the documents now sought to be produced and thereafter, the respondents could have liberty to cross

examine the petitioners *inter alia* on the issue of documents. The prejudice which will occasion the respondents can be compensated by way of substantial costs.

10. According to me, the aforesaid act will promote substantial justice without in any manner prejudicing either of the parties.

11. Accordingly, the impugned orders are set aside, leave is granted to the petitioners to examine himself in context of the documents which they seeks to produce. The respondents are granted liberty to cross-examine the petitioners. Besides, it is made clear that all objections and issues concerning the validity, genuineness, applicability and binding nature of the documents, etc. are expressly kept open.

12. The aforesaid relief is granted subject to the petitioners paying to respondent Nos.1 and 2 costs of Rs.25,000/- within a period of four weeks from today.

13. If there is any difficulty in payment of costs directly to the respondent Nos.1 and 2, the petitioners to deposit the said costs before the trial Court and respondent Nos.1 and 2 are granted liberty to withdraw the same unconditionally.

14. If the costs are not paid or deposited within the period of four weeks from today, this petition shall be deemed to have been dismissed without further reference to this Court with costs of

Rs.25,000/-.

15. The stay on further proceedings is hereby vacated. The parties to appear before the learned trial Judge on May 7, 2019 at 11.00 a.m.

16. Rule is made absolute in the aforesaid terms.

17. All concerned to act on the basis of an authenticated copy of this order.

(M.S.SONAK, J.)