

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 2195 OF 2017

Vishwanath Ganpat Gulve
(since deceased through LRs.) & Ors. ... Petitioners
Vs.
Sou. Ashwini Anil Kulkarni & Ors. ... Respondents

Mr. Rameshwar N. Gite, for the Petitioners.
Ms. Pinaz Contractor, for the Respondent Nos. 2 & 3.

CORAM : M. S. SONAK, J.

DATE : MARCH 14, 2019

P.C.:

1. Heard Mr. Rameshwar Geete, learned counsel for the petitioners, and Ms. Pinaz Contractor for respondent Nos. 2 and 3.
2. The challenge in this petition is to the order dated 29/9/2016 passed below Exhibit 177, by which petitioner had applied for issue of witness summons to defendant No.1 to depose in the matter.
3. Mr. Geete, learned counsel for the petitioners submits that, it is the case of the petitioner that defendant Nos. 2 and 3 by collusion have entered into an unregistered agreement with defendant No.1. Mr. Geete submits that since petitioner is seeking

specific performance in relation to the suit property which is also the subject matter of the unregistered agreement, it is necessary to summon defendant No.1 to depose and produce the unregistered agreement on record. He submits that there can be no bar to adopt such a course of action, as was held by learned Single Judge of this Court in the case of **Ravalnath Builders Vs. Sebastiano Escolastica Beatriz Nunes Mendonsa** reported in **2012 (2) Mh. LJ 292**.

4. Ms. Contractor, learned counsel for respondent Nos. 2 and 3 defends the impugned order on the basis of reasoning reflected therein. She refers to the decision in **Ravalnath Builders** (supra) is distinguishable, and in any case the said decision itself leads to the position that in every case, the Court is bound to summons the opposite party to depose in the matter.

5. These are the rival contentions, which now fall for determination.

6. In the facts and circumstances of the present case, it cannot be said that learned Trial Judge was not justified in refusing to issue witness summons to the defendant No.1 in the

suit. No doubt, it is the case of the petitioners that the defendant Nos. 2 and 3 have executed an agreement with defendant No.1. It is also the case of the petitioners that such an agreement is unregistered. All such contentions will really not affect the petitioners' claim for specific performance, in fact, the petitioners are able to make out the case that they deserve specific performance in respect of the alleged agreement with defendant No.1. The production or non-production of any alleged agreement, inter se between the defendant Nos. 2 and 3 on one hand and defendant No.1 on the other, will really make no difference to the petitioners' claim for specific performance. However, the petitioners succeed in making out case for grant of relief, as prayed.

7. That apart, it is not as in every case, and on mere asking, the Court can issue a witness summons to the opposite party to depose in the matter. If, in a given case, the opposite party, denies to step into the box, no doubt, some adverse inference can always be drawn against such party. In **Ravalnath Builders** (supra), it is laid down that it is not necessary that in each and every case witness summons is required to be issued against opposite party to depose in the matter.

8. Accordingly it cannot be said that there is any jurisdictional error in the impugned order or that the discretion has been exercised by the learned trial Judge unreasonably or arbitrarily.

9. This petition is, therefore, liable to be dismissed and is dismissed.

10. There shall be no order as to costs.

Sd/-
(M. S. SONAK, J.)