

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

WRIT PETITION NO. 169 OF 2018

Shri Wahid Khan s/o Hasan Khan,
aged about 47 years, occupation -
Agriculturist and Business,
registered address r/o Peer
Bawanpura, Tahsil – Achalpur,
District – Amravati.

... PETITIONER

Versus

1. Shri Samsheer Khan s/o Hasan Khan, aged about 55 years, occupation – Agriculturist and Business, r/o Jamil Colony, Valgaon Road, Tahsil & District Amravati.
2. Shri Bismillah Khan s/o Hasan Khan, aged about 51 years, occupation – Agriculturist and Labour work, r/o Peer Bawanpura, Tahsil – Achalpur, Dist. Amravati.
3. Smt. Nyamat Khatoon w/o Hayat Khan, aged about 53 years, occupation – Agriculturist, r/o Habib Nagar, Valgaon Road, Tahsil & District – Amravati.
4. Smt. Chand Sultana w/o Saiyad Khalid, aged about 35 years, occupation – Agriculturist, r/o Peer Bawanpura, Tahsil – Achalpur District – Amravati.
5. Ajij Khan s/o Hasan Khan, aged about 57 years, occupation - Agriculturist and Business,

r/o Jamil Colony, Near Baga
Building, Valgaon Road, Tahsil
& District – Amravati.

6. Dr. Ibrahim s/o Hasan Khan,
aged about 59 years,
occupation – Agriculturist and
Medical Profession r/o Maulana
Azad Colony, Valgaon Road,
Tahsil & District – Amravati.

... RESPONDENTS

Shri K.B. Zinjarde, Advocate for the petitioner.

Shri S.S. Alaspurkar, Advocate for respondent Nos. 1 to 4.

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**CORAM : PUSHPA V. GANEDIWALA J.
AUGUST 20, 2019.**

ORAL JUDGMENT : (PER PUSHPA V. GANEDIWALA, J.)

Rule. Rule is made returnable forthwith and heard finally with the consent of Shri K.B. Zinjarde, learned counsel for the petitioner and Shri S.S. Alaspurkar, learned counsel for respondent Nos. 1 to 4.

2. In this petition, the petitioner – original defendant No. 3 challenges the order passed below Exh. 51 dated 03.12.2018 whereby the learned Joint Civil Judge, Senior Division, Achalpur, rejected the application of defendant No. 3 to file document – Gift Deed on record. The reason for

rejection of the application as stated in the impugned order is that there is no stage in the Code of Civil Procedure once the stage of Order XIII, Rule 1 is crossed.

3. Shri Alaspurkar, learned counsel for respondent Nos. 1 to 4 in his reply strongly opposes the petition and submits that defendant No. 3 has not come with clean hands. He suppressed the document and the said document was not supplied to the respondents during exchange of notices.

4. I have considered the submissions made on behalf of both the parties. At the outset, undisputedly, issue No. 4 as framed in the said Suit is, *“Do the plaintiffs prove that deceased Hasan Khan Alam Khan had not executed any Gift Deed dated 18.07.2001 ?”*

5. In the plaintiff's suit for partition of the ancestral property, defendant No. 3 claims to be the owner of one hectare of land out of total area of Gat No. 102/6, on the basis of Gift Deed in his favour by Hasan Khan Alam Khan, who is

the father of the plaintiff and defendants. Defendant No. 3 wants to bring on record the said Gift deed.

6. As per Order VIII, Rule 1-A of the Civil Procedure Code, it is the duty of the defendant to produce documents upon which relief is claimed when the written statement is filed in the Court. However, with the leave of the Court, the documents which ought to have been produced and not produced, can be produced during the hearing of the Suit.

7. As per law, at any stage of the suit, even at Appellate stage, the additional evidence can be brought on record subject to satisfaction of the court about due diligence clause and if the evidence is necessary to decide the real question in controversy between the parties.

8. In the instant case, there is no dispute that the suit is at the stage of recording of cross examination of plaintiff witness (PW-1). The defence has not yet started his evidence. Therefore, there is no delay as such.

9. In view of the peculiar defence of defendant No. 3, in my opinion, document of Gift Deed would be necessary to decide Issue No. 4 in the Suit. The question raised by respondents herein/ plaintiffs about fabrication would be decided on the basis of evidence which would be brought on record. I do not find that there is any cognizable delay which would cause prejudice to the plaintiffs in the Suit. The Gift deed would be necessary to decide the issue between the parties. Furthermore, it was not the duty of defendant No. 3/ petitioner to supply a copy of the said Gift deed to the defendants prior to filing of the Suit. Therefore, no question of suppressing the said document would arise.

10. In such circumstances, the order of the learned Trial Court does not appear to be proper and correct as per law which needs to be set aside and the same is accordingly set aside.

11 Writ Petition is allowed, however, subject to costs of Rs.3,000/- (Rs. Three thousand only) to the plaintiffs. As the

Suit is of the year 2013, the trial Court shall decide the same expeditiously and preferably within a period of one year. Needless to mention that the plaintiffs are at liberty to file evidence in order to rebut the document.

JUDGE

*GS.