

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

5. WRIT PETITION NO. 8367 OF 2018

Bismillakhan Samsher Khan Pathan & others

...Petitioners

VERSUS

Mr. & Mrs. Alhaj Kazi Chirogoddin Trust,
Nandurbar and others

...Respondents

Mr. Sharad V. Natu, Advocate for petitioners

Mr. Ruchir S. Wani, Advocate for respondents No.1 & 2

CORAM : ROHIT B. DEO, J.

DATE : 9th January, 2020

PER COURT :

1. The petitioners are plaintiffs in the suit brought for declaration and permanent injunction qua the suit property.
2. The petitioners closed their evidence. The defendants have chosen not to enter the witness box.
3. At this stage, the petitioners moved an application Exh. 55 purportedly under Order XI Rule 12 read with Section 151 of C.P.C. seeking a direction that the defendants should produce a copy of the lease deed, purportedly executed in favour of the defendants by the trust. The plaintiffs contend that such is the

averment in the written statement and since the plaintiffs did not get an opportunity to cross examine the defendants, who did not examine themselves, it would be necessary for the court to direct the production of the said document.

4. The Trial Court has held that the document in question is not material inasmuch as there is no burden cast either on the plaintiffs or the defendants to prove any fact pertaining to which the document is executed.

5. The observation of the Trial Court apart, even if it is assumed that the document is relevant, it is obvious that the Trial Court would be entitled to draw an adverse inference if material evidence is suppressed, particularly, if the document, which is referred to in the written statement, is suppressed.

6. I do not see any reason to interfere with the order impugned in the Writ Jurisdiction. The petition is dismissed.

(ROHIT B. DEO)
JUDGE