

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

914 WRIT PETITION NO.7793 OF 2014
WITH WP/7794/2014

AMRUT SAKHARAM BAISANE AND OTHERS
VERSUS
SAMBHU SAKHARAM BAISANE

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Mr. M.V. Bhamre, Advocate for the petitioners.
Mr. M.G. Mustafa, Advocate for respondent.

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CORAM : **Rohit B. Deo, J.**

DATE : 29th January 2020.

ORDER :-

. Writ Petition No. 7793 of 2014 is instituted by the defendants in Regular Civil Suit No.15/2012 brought by the respondent / plaintiff for partition and separate possession.

2. The defendants preferred an application (Exh.122) for production of a document dated 18.01.1969 purportedly a memorandum of partition. This application is rejected by the trial Court by the order impugned.

3. Writ Petition No. 7794 of 2014 is preferred by the defendants challenging the order of the trial Court rejecting the application seeking impounding of memorandum of partition referred to supra.

4. The suit is filed in the year 2006 and in view of transfer of the suit, it is re-registered in the year 2012. The plaintiff filed his affidavit in lieu of oral examination in chief on 15.04.2009. The suit was adjourned on multiple occasions for diverse reasons. In the interregnum, defendants filed written statement on 17.03.2010. Since the defendants did not avail opportunity to cross-examine the plaintiff from 03.04.2012 to 15.01.2013, the order of proceeding without cross-examination was passed on 15.01.2013 and the suit was adjourned for recording evidence of defendants.

5. The defendants moved an application to set aside the “no cross” order which was allowed subject to cost and the suit was re-fixed for cross-examination. The defendants filed documents vide lists Exh.113 and Exh.115. Again the defendants defaulted in conducting cross-examination and for the second time, “no cross” order was passed on 12.07.2013. The defendants again moved an application for setting aside the “no cross” order which application was allowed. At this stage, the defendants preferred an application for production of document styled as “memorandum of partition”.

6. The trial Court has held that the defendants are not ready and willing to conduct the cross-examination although the “no cross” order was set aside twice. It is further held that various documents were filed by the defendants on multiple occasions. The application which seeks production of document styled as “memorandum of partition” does not spell out any reason why the trial Court ought to grant leave to file on record the said document.

7. In view of the provisions of Order 8 Rule 1-A of the Code of Civil Procedure the defendant is bound to produce documents which are relied upon, when the written statement is presented. Sub-section 3 of empowers the Court to permit production of document which is not produced at the stage of filing written statement. The leave which is envisaged is not a ritualistic formality and needless to observe, considering the legislative intent of ensuring expeditious disposal of the litigation, which legislative intent is reinforced by the amendments incorporated by the Code of Civil Procedure (Amendment) Act, 2002, cogent reasons will have to give to justify seeking such leave.

8. On perusal of the application seeking production of the document, I am satisfied that no case was made out by

the defendants for grant of leave to produce the document styled as “memorandum of partition” at extremely belated stage. I do not therefore find that the order impugned, which rejects the prayer for production of the said document suffers from any error much less an error warranting interference in writ jurisdiction.

9. Writ Petition No. 7793 of 2014 is dismissed.

10. In view of dismissal of Writ Petition No. 7793 of 2014, Writ Petition No. 7794 of 2014 is disposed of.

11. The trial Court is requested to decide the suit expeditiously and in any event to finally dispose of the same within 12 months.

(ROHIT B. DEO, J.)