

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

914 WRIT PETITION NO.9916 OF 2011

ASHOK SHALIKRAM JAISWAL
VERSUS
SATYANARAYAN ROOPLAL JAISWAL DIED THROUGH L.RS.
AND OTHERS

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Advocate for Petitioner : Mr. Surve Hemant S.
Advocate for Respondent Nos.1A to 1B : Mr. S. R. Deshpande.
Advocate for Respondent Nos.5 to 7 : Mr. H. P. Jadhav.

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CORAM : V. K. JADHAV, J.
DATE : 04.03.2020

PER COURT :-

1. Heard finally with consent at admission stage.
2. The petitioner is original defendant No.1. Respondent No.1-original plaintiff has instituted Special Civil Suit No.434 of 2009 for a decree of perpetual injunction in respect of the suit house and also for recovery of 1/5th share in the amount of compensation received by the defendants towards acquisition of the portion of the suit house for widening of Jalna-Aurangabad road. After commencement of the trial and when respondent No.1-original plaintiff has examined four witnesses,

the respondent-plaintiff has filed an application Exh.85 for production of documents. The petitioner and the other defendants have strongly resisted the said application by filing say over it. By the impugned order dated 15.12.2011, below Exh.85 in Special Civil Suit No.434 of 2009, the Trial Court has allowed the said application subject to costs of Rs.1500/- and thereby allowed production of documents produced along with the applications Exh.76 and 78. Hence, this Writ Petition.

3. The learned counsel for the petitioner submits that by common order dated 13.12.2011, the Trial Court has rejected the applications Exh.76 and 78 on the ground that the plaintiff and his three witnesses have been cross-examined and if the production of these documents is permitted, the same will cause prejudice to the other side. The learned counsel submits that even then, after the examination of the 4th witness, the respondent-plaintiff filed the application Exh.85 for production of documents and the Trial Court has allowed the said application Exh.85 and thereby allowed production of documents produced along with applications Exh.76 and 78. The learned counsel submits that the petitioner-defendant would have no opportunity to cross-examine the plaintiff's

witnesses by referring those documents. The learned counsel submits that during pendency of the writ petition, the respondent-plaintiff died and as such the petitioner would not get any opportunity to cross-examine the plaintiff by referring those documents. The learned counsel submits that though the documents sought to be produced on record are public documents, however, the petitioner would lose his valuable right of cross-examination by referring those documents. The learned counsel submits that the order impugned is thus liable to be quashed and set aside. This Writ Petition deserves to be allowed.

4. The learned counsel for the petitioner, in order to substantiate his contention, placed his reliance in case of ***M/s. Bagai Construction Vs. M/s. Gupta Building Material Store*** reported in ***2013 ALL SCR 1079***.

5. The learned counsel for the respondent-plaintiff submits that the documents sought to be produced are public documents and if at all the petitioner-defendant wants to refer those documents for cross-examination, the plaintiff's witnesses can be recalled. The learned counsel submits that the

documents as sought to be produced are in the nature of map, E-Statement of the award passed by the Special Land Acquisition Office in respect of acquisition of part of the suit house. The learned counsel submits that even if the respondent-plaintiff is no more, the witnesses of the plaintiff can be cross-examined by referring those documents. The learned counsel submits that those are the certified copies of the public documents admissible in evidence. Even on the basis of those documents, both the parties can make their respective submissions at the conclusion of the trial. The learned counsel submits that this Court, while disposing of Civil Application No.1348 of 2011 with Appeal From Order Stamp No.965 of 2011 by order dated 25.03.2011, directed that the Special Civil Suit No.434 of 2009 shall be disposed off as expeditiously as possible, preferably by the end of the year 2011. However, the petitioner-defendant has preferred this Writ Petition and right from the year 2011 the further proceedings in the suit are stayed.

6. I have carefully gone through the contents of the application Exh.85 and the order passed below Exh.85. The Trial Court has also referred the document under list dated

08.12.2011 which is the village map of Chikhalthana prepared by the City Survey Office, Aurangabad. It is not disputed that the said document is a public document. It is the case of the respondent-plaintiff that the City Survey Office has wrongly shown house of the plaintiff in CTS No.100. In order to show this position, the map is sought to be produced on record. Furthermore, the respondent-plaintiff is claiming relief of compensation pertaining to the acquisition of the suit house received by the defendants to the extent of his 1/5th share. Thus, the respondent-plaintiff wanted to produce on record the documents as per list dated 12.12.2011. Those documents are of acquisition of portion of CTS No.100 and 84. Those documents are of award as well as E-statement and receipt of amount of compensation. Needless to say that all these documents are public documents and relevant for just disposal of the suit. Those documents are admissible in evidence. If at all the petitioner-defendant wants to refer those documents in cross-examination of the plaintiff's witnesses, he may do so by recalling the witnesses of the plaintiff's.

7. In the case of *M/s. Bagai Construction (supra)*, relied upon by the learned counsel for the petitioner, in paragraph

No.11, the Supreme Court has rejected the application seeking production of documents at belated stage for the reason that the original bills were sought to be produced on record though the plaintiff had an opportunity and occasion of filing the application at the earlier stage. It is also observed by the Supreme Court that during the entire trial, those documents remained in exclusive possession of the plaintiff but for the reasons known to him, still the plaintiff has not placed those original bills on record. The Supreme Court has also noted that after conclusion of the evidence and after final arguments, at the stage when the matter was reserved for pronouncement of judgment, the application for production of documents came to be filed. In the instant case, facts are totally different. The documents sought to be produced on record will certainly assist the court for just disposal of the suit.

8. In view of the same, I do not find any substance in this Writ petition. The Writ Petition is liable to be dismissed with the modification that the petitioner-defendant is permitted to recall the witnesses for cross-examination by referring those documents to the extent of cross-examination pertaining to the said documents only, if so desired. Hence, I proceed to pass

the following order :

ORDER

- (i) The Writ Petition is hereby dismissed.
- (ii) The Trial Court is hereby directed to dispose off the suit as expeditiously as possible, preferably within a period of six (6) months from the date of this order.
- (iii) Writ Petition is accordingly disposed off.

(V. K. JADHAV, J.)

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