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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO.1353 OF 2019

M/s. Swayam Builders ... Petitioner
Versus
Asgarbhai Valibhai Vohra and Ors. ...Respondents

Mr. A. R. Gole, for the Petitioner.

Ms. Sunita Banis, for Respondent Nos. 1 and 2.

Mr. M. S. Lagu, for Respondent No.10.

CORAM : REVATI MOHITE DERE, J.

DATE : 26th FEBRUARY, 2020

P.C. :

1. Heard learned counsel for the parties.
2. By this Petition, the Petitioner has impugned only the order dated 18th July, 2018, passed by the learned 9th Joint Civil Judge, Senior Division, Thane, below Exhibit – 154, in Special Civil Suit No.946 of 2011, by which, the petitioner's application for issuing witness summons to the concerned Officer In-Charge of Bhayander Police Station, for producing the original Conveyance Deed dated 8th February, 2011, seized in C.R. No.I-238 of 2015, was rejected.

3. The Defendant No.8 had filed his affidavit in the form of examination-in-chief and deposed certain facts therein and annexed thereto certain relevant documents, in support of the evidence alongwith list of documents. Alongwith the list of documents, a certified copy of the Conveyance Deed dated 8th February, 2011, was filed, as according to the petitioner, the original of the said document i.e. Conveyance Deed dated 8th February, 2011, was in the custody of the Bhayander Police Station, seized in C.R. No.I-238 of 2015. The petitioner filed an application (Exhibit – 154) and prayed that summons be issued to the concerned Officer In-Charge of Bhayander Police Station, for producing the original Conveyance Deed dated 8th February, 2011, seized in C.R. No.I-238 of 2015. The said application was resisted by the respondent nos.1 and 2 plaintiffs. According to the learned counsel for the respondent nos.1 and 2 – plaintiffs, the said document is a forged document and therefore the question of producing the said document does not arise. The trial Court vide order dated 18th July, 2018, rejected the said application observing that the police would not be in a position to produce the same in the Court and that the defendant no. 8, may advert to other legal measures. The said observation of the trial Court is completely erroneous. If according to the petitioner, the alleged Conveyance Deed dated 8th February, 2011, has been seized by the concerned Officer In-Charge of Bhayander Police

Station, in C.R. No.I-238 of 2015, it is the duty of the Court to issue summons to the concerned Police Station on an application seeking production of the said document, which original is allegedly in the custody of the Bhayander Police Station.

4. Whether or not the document is forged or not and whether or not the said document can be exhibited or not, is a matter which will be decided by the trial Court, when the said document is produced.

5. Considering the aforesaid, the impugned order dated 18th July, 2018, passed by the learned 9th Joint Civil Judge, Senior Division, Thane, below Exhibit – 154, in Special Civil Suit No.946 of 2011, is quashed and set aside. The trial Court to issue witness summons to the concerned Officer In-Charge of Bhayander Police Station, for producing the original conveyance deed dated 8th February, 2011, which is seized in C.R. No.I-238 of 2015.

6. Petition is allowed and disposed of in above terms.

7. All contentions of all parties are kept open with respect to the admissibility and authenticity of the said document.

8. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.