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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2989 OF 2016

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| 1. | Suresh Kisanrao Gaikwad
Age – 51 years, Occ – Agriculture | PETITIONERS |
| 2. | Vijaya Suresh Gaikwad
Age – 38 years, Occ – Household | |
| 3. | Ramesh Kisanrao Gaikwad
Age – 42 years, Occ – Agriculture | |
| 4. | Vandana Ramesh Gaikwad
Age – 37 years, Occ – Household | |
| 5. | Dattatray Kisanrao Gaikwad
Age – 45 years, Occ – Agriculture | |
| 6. | Muktabai Keruji Gaikwad
Age – 75 years, Occ – Household | |

All R/o Opposite Railway Station
Ahmednagar, District – Ahmednagar

VERSUS

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|----|--|-------------|
| 1. | Machindra Bhanudas Kulange
Age – 49 years, Occ – Agril | RESPONDENTS |
| 2. | Rohidas Bhanudas Kulange
Age – 44 years, Occ – Agriculture | |
| | Both R/o Bhushannagar, Kedgao,
Taluka and District – Ahmednagar | |
| 3. | Ashok Bhanudas Kulange
Age – 47 years, Occ – Agri | |
| 4. | Nanibai Bhanudas Kulange
Age – 70 years, Occ – Agriculture
R/o Hiware Zare
Taluka and District – Ahmednagar | |

5. Binubai Raosaheb Anadkar
Age – 51 years, Occ – Agriculture
R/o Hiware Zare
Taluka and District – Ahmednagar
6. Nanasaheb Sahadu Kulange
Died Through LRs
 - 6A. Parighabai Nana Kulange
Age – 72 years, Occ – Agriculture
 - 6B. Ravindra Nana Kulange
Age – 52 years, Occ – Agriculture
 - 6C. Nalini Madhadev Waghule
Age – 49 years, Occ – Agriculture
 - 6D. Balasaheb Nana Kulange
Age – 48 years, Occ – Agriculture
 - 6E. Ramesh Nana Kulange
Age – 44 years, Occ – Agriculture
 - 6F. Bhagwan Nana Kulange
Age – 40 years, Occ – Agriculture
 - 6G. Raghunath Nana Kulange
Age – 38 years, Occ – Agriculture
7. Goraksh Sahadu Kulange
Died Through LRs
 - 7A. Gangubai Goraksh Kulange
Age – 68 years, Occ – Agriculture
 - 7B. Kailas Goraksh Kulange
Age – 45 years, Occ – Agriculture
 - 7C. Shrikant Goraksh Kulange
Age – 43 years, Occ – Agriculture
 - 7D. Navnath Goraksh Kulange
Age – 40 years, Occ – Agriculture

All are R/o Ralegan
Taluka and District – Ahmednagar

7E. Sow. Usha Dashrath Borude
Age – 47 years, Occ – Household
R/o Room No. 18, Building No. 20,
Railway Police Quarter, Pandnagar,
Ghatkopar, Mumbai – 75

8. Vishwanath Sahadu Kulange
(Died Through LRs)

8A. Saraswati Vishwanath Kulange
Age - 64 years, Occ – Household

8B. Virendra Vishwanath Kulange
Age – 40 years, Occ – Agri & Contractor

Both are R/o Shivneri Marg, Station Road
Ahmednagar, Taluka & District – Ahmednagar

8C. Sangita Jitendra Jadhav
Age – 44 years, Occ – Household
R/o Flat No. 6, Natraj Apartment,
Girija Ring Road, Poud Road Kothrud
Pune

8D. Rohini Shivprasad Tilekar
Age – 42 years, Occ – Household
R/o Matoshri Bungalow, Lane No. 6,
SuJaynagar, Before new Stand
Akluj, Taluka – Malshiras
District – Solapur

8E. Suchitra Umesh Zagde
Age – 38 years, Occ – Household
R/o Flat No. 903, C-Building, Golden Patel
Dudhane Nagar,
Near Tree High School,
Pune – 411 052

9. Bandu Sahadu Kulange
Age – 65 years, Occ – Agri & Contractor
R/o Shivneri Marg, Station Road,
Ahmednagar, Dist – Ahmednagar

10. Parigabai Nanasaheb Kulange
Age – 72 years, Occ – Agriculture
11. Ravindra Nanasaheb Kulange
Age – 52 years, Occ – Agriculture
12. Balasaheb Nanasaheb Kulange
Age – 46 years, Occ – Agriculture
All R/o Nandur, Post – Waghluj
Taluka – Ashti, District - Beed
13. Ramesh Nanasaheb Kulange
Age – 43 years, Occ – Agriculture & Service
Police Quater, Balika Ashram
Ahmednagar, Taluka & District – Ahmednagar
14. Bhagwant Nanasaheb Kulange
Age – 40 years, Occ – Agriculture
R/o Nandur Post – Waghluj
Taluka – Ashti, District – Beed
15. Raghunath Nanasaheb Kulange
Age – 35 years, Occ – Agri & Service
R/o Police Quarter, Balika Ashram
Ahmednagar, Taluka & District – Ahmednagar
16. Nalini Mahadeo Waghule
Age – 49 years, Occ – Agriculture
R/o Sheri Bk. Taluka – Ashti District-Beed

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Mr. Narayan B. Narwade, Advocate for the petitioners

Mr. N.C.Garud, Advocate for respondent No. 1to5, 7A to 7E, 8& 9

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 6th DECEMBER, 2021

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of learned advocates for the parties.

2. This petition is directed against order dated 4th January, 2016 passed by Second Joint Civil Judge, Senior Division, Ahmednagar below Exhibit-88 in Special Civil Suit No. 87 of 2009 thereby striking out the defence of the petitioners – defendants.

3. The petitioners are the original defendants No. 1 to 6 in Special Civil Suit No. 87 of 2009 filed by respondents No. 1 to 9 – original plaintiffs. The suit is filed for declaration that the sale deed executed by defendant No. 1 on 31st December, 2008 as a General Power of Attorney Holder of defendants No. 2 to 6 be declared as null and void. An injunction is also claimed against defendants No. 2 to 6 that they should not disturb the peaceful possession of the plaintiffs.

4. The defendants appeared and resisted the suit by filing written statement.

5. During the pendency of the suit, application Exhibit-47 is filed by the plaintiffs contending that by playing a fraud, the defendant No. 1 has obtained two General Power of Attorneys in respect of the suit property i.e. one from plaintiffs No. 6 to 9 and the other from plaintiffs No.1 to 5. The defendant No.1 has prepared a bogus confirmation deed in favour of the defendants

No. 2 to 6 on 31st December, 2008. Thereafter, being General Power of Attorney Holder, defendant No. 1 has sold the suit property to defendants No. 2 to 6 on 31st December, 2008. The original agreement of sale, general power of attorney, confirmation deed and the sale deeds are in possession of defendant No. 1 and those ought to have been filed along with the written statement by the defendant No.1, however, the same are not produced on record. The defendants have referred to the affidavits dated 1st February, 2008 and 27th February, 2008 in their written statement in paragraph No. 29. The said documents are also not filed in the suit and in the interest of justice, it is necessary to bring all the original documents on record. Hence a prayer is made to give direction to the defendants to file original documents in the suit.

6. The defendants objected to the said application contending that the said application Exhibit-47 is not tenable and they denied the statements in the said application.

7. The trial court, by order dated 9th November, 2011, directed the defendants to produce the documents. The defendants failed to produce the said documents in compliance of the Court's order.

8. The plaintiffs, thereafter, filed application Exhibit-88 seeking striking off defence of the defendants as the defendants failed to obey the orders passed below Exhibit-47, contending that deliberately the said documents are not filed by the defendants and thereby the defendants have flouted the orders passed by the trial court.

9. The defendants – petitioners filed say to the said application contending that the original documents were lost by the defendants in the court on 17th March, 2009. Complaint to that effect was lodged by the defendants to Kotwali Police Station, Ahmednagar on 18th March, 2009, entry of which is taken in missing register No. 872 of 2009. Therefore, they are unable to produce the original documents. It is further contended that certified copies of the documents are already on record. Hence, they claim rejection of Exhibit-88.

10. The trial court, by the impugned order, 4th January, 2016, allowed the application Exhibit-88 and struck off the defence of the defendants. This order is impugned in the present writ petition.

11. Heard learned advocate for the petitioners and learned advocate for the respondents.

12. Learned advocate for the petitioners has assailed the impugned order stating that the trial court was not justified in striking off the defence in view of the fact that certified copies of the relevant documents are already on record. In support of his submissions, he relied on the judgment of single Judge of this Court in the matter of "***Sheshrao Raibhan Ingale V/s Shilpa Sheshrao Ingale***" reported in ***2005 (2) Bom. C. R. 667***.

13. Learned advocate for the respondents, on the other hand, vehemently opposed the petition. While supporting the impugned order, he submitted that in spite of specific directions issued by the trial court, the defendants have failed to produce the original documents and, therefore, the trial court was justified in striking off their defence.

14. Perusal of the record indicates that the defendants, in reply to the application Exhibit-88, have given a detailed say wherein they have specifically stated that all the original documents are already lost and complaint to that effect is given to Kotwali Police Station. The complaint of the defendants is registered at Missing Registration No. 872 of 2009. The petitioners – defendants have placed on record the certificate issued by the Police Inspector of Kotwali Police Station that such missing complaint is registered

at the instance of the petitioners – defendants.

15. It is not in dispute that certified copies of the original documents are already placed on record of the trial court. In that view of the matter, the trial court was not justified in striking off the defence of the defendants – petitioners. Striking off the defence would cause serious prejudice to the petitioners – defendants which should not be permitted in the peculiar facts of the present case. The petitioners have shown sufficient reasons and accepting the same, the trial court ought to have rejected the application Exhibit-88. The ratio laid down in the case of ***Sheshrao Ingale (supra)*** supports the case of the petitioners.

16. Observations of the Supreme Court in the judgment in case of "***Sangram Singh V/s Election Tribunal, Kotah***" reported in ***1955 AIR 425 : 1955 SCR (2) 1*** may usefully be referred here; -

“ A Code of procedure must be regarded as such. It is procedure something designed to facilitate justice and further its ends; not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should, therefore, be guarded against (provided always that justice is done to both sides), lest the very means designed for furtherance of justice be used to frustrate it. Our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decision should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course there must be

exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle.”

17. Applying above ratio to the case in hand, fair opportunity to defend the case cannot be denied to the petitioners. In that view of the matter, the impugned order dated 4th January, 2016 passed by 2nd Joint Civil Judge, Senior Division, Ahmendagar below Exhibit-88 in Special Civil Suit No.87 of 2009 cannot sustain and the same is hereby quashed and set aside. Writ petition is allowed. Rule is made absolute in aforesaid terms with no order as to costs.

18. Taking into consideration the fact that the suit is of the year 2009, the trial court to complete the hearing as expeditiously as possible and dispose of the suit in any case within six months from the date of receipt of writ of this order.

[NITIN B. SURYAWANSHI]
JUDGE