

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

908 WRIT PETITION NO.4480 OF 2016

**KISHANLAL BHAGWANDAS KALDA AND OTHERS
VERSUS
MUNICIPAL CORPORATION THROUGH ITS COMMISSIONER AND
ANOTHER**

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Advocate for Petitioners : Mr.Kasliwal Ajit D.
Advocate for Respondent No. 1 : Mr. A.s. Savale h/f Mr.Shah J.R.

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CORAM : N.J. JAMADAR, J.

DATE : 19/03/2021

P.C. :

1. Heard the learned counsel for the parties.
2. The challenge in this petition is to an order dated 2nd February, 2016 passed by the learned Civil Judge, Senior Division, Aurangabad on an application (Exh. 57) seeking a direction to the defendant to produce original sale deed dated 6th November, 1996 in respect of the property bearing CTS Nos. 15854/A and 15852/B situated at Bagsherjung, Aurangabad.
3. The said application came to be rejected opining inter-alia that such direction is already passed on an application (Exh. 44).
4. The petitioners-plaintiffs have instituted the suit for recovery

of a sum of Rs. 60,38,046/- along with interest towards compensation for the acquisition of the land bearing CTS Nos. 15854/A and 15852/B.

5. In the said suit, the petitioners preferred an application seeking production of the original sale deed dated 6th November, 1996, in respect of property bearing CTS Nos.15854/A and 15852/B asserting that the original sale deed was in the custody of the defendant-respondent No. 1. By an order dated 11th November, 2014 the defendant-respondent No. 1 was directed to produce the said sale deed. Since the defendant Corporation did not produce the said sale deed, the plaintiffs-petitioners filed an application seeking permission to lead secondary evidence (Exh. 49). The said application came to be rejected by the Court by an order dated 3rd March, 2015 holding that the plaintiff can produce the certified copy of the said instrument, which was then claimed to have been registered.

6. The petitioners again moved the instant application (Exh. 57) seeking direction to the defendant-Corporation to produce the sale deed as its certified copy could not be obtained since it transpired that the sale deed was not registered. The learned Civil Judge, Senior Division, Aurangabad was persuaded to reject the application by the impugned order.

7. Evidently, the petitioners-plaintiffs were under an impression that the sale deed dated 6th November, 1996, allegedly executed by the plaintiffs in favour of the defendant-Corporation, was registered. Initially, the Court directed the defendant-Corporation to produce the original sale-deed. The non-production thereof, made the plaintiffs to seek permission to lead secondary evidence. The said application (Exh. 49) came to be rejected on the ground that the plaintiffs could produce a certified copy of the said sale deed as it was alleged to be registered.

8. It is imperative to note that the plaintiffs-petitioners now claim that the said sale deed is not registered. The situation which thus obtains is that the defendant-Corporation has not complied with the direction to produce the original sale deed. Indisputably, such non compliance entails consequences. The endeavour of the plaintiff-petitioners to lead secondary evidence was turned down on the premise that the plaintiffs can produce the certified copy of the said sale deed, presumably, on the supposition that said sale deed was registered.

9. In the circumstances, the petition can be disposed of by giving liberty to the petitioners-plaintiffs to seek afresh permission to lead secondary evidence of the said instrument. This Court is of the view that the earlier order of rejection of the prayer to lead secondary evidence should not come in the way of the petitioners-plaintiffs as, at that point

of time, the petitioners-plaintiffs were under the impression that the said sale deed was registered. And, thus, the Trial Court had rejected the application on the premise that the plaintiffs-petitioners could file its certified copy.

10. It is, however, made clear that the issue as to whether the petitioners-plaintiffs are entitled to prove the said document in evidence by way of secondary evidence, when the original instrument is admittedly not registered, is a matter which has to be decided by the Trial Court on its own merits and this Court may not be construed to have expressed any opinion on the said aspect of the matter.

11. With the aforesaid clarification, the petition stands disposed of.

(N.J. JAMADAR)
JUDGE

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