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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4788 OF 2014

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| 1. Shyam s/o Vasant Rao Mundlik
Age- 47 years, Occ- Business
R/o House No.3418 Asara Sadan
Khista Galli, Ahmednagar | PETITIONERS |
| 2. Ganesh s/o Vasant Rao Mundlik
Age- 45 years, Occ- Business
R/o Same as above | |
| 3. Somnath s/o Vasant Rao Mundlik
Age- 43 years, Occ- Business
R/o Same as above | |
| 4. Muktabai w/o Vasant Rao Mundlik
Age- 70 years, Occ- Business
R/o Same as above | |

VERSUS

Bhaskar s/o Gangadhar Mundlik Age – 79 years, Occ – Nil R/o Keli Bazar, Aurangabad Through GPA Bhagwan Bhaskar Mundlik R/o Keli Bazar, Aurangabad	RESPONDENT
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Mr. S. G. Dodya, Advocate for the petitioners
Mr. M. R. Jadhav, Advocate for the respondent

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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 takes exception to the findings / observations of the learned 6th Joint Civil Judge, Senior Division, Ahmednagar made while recording the cross examination of defendant No. 2 – Ganesh below Exhibit-76, on 11th April, 2014 in Special Civil Suit No. 242 of 2009.

3. The respondent – original plaintiff filed Special Civil Suit No. 242 of 2009 seeking a declaration that the registered sale deeds No. 39 of 2007 and 40 of 2007 in respect of the suit property be declared as null and void.

4. In the said suit, while cross examination of defendant No.2 – Ganesh was in progress, learned advocate for the plaintiff tried to refer photo copy of the sale deeds to the witness, however, the same was objected by learned advocate for the defendants – petitioners, stating that the evidence of the plaintiff is already over, the entire suit is based on the sale deeds and the sale deeds are challenged by the plaintiff, however the original sale deeds are not placed on record. Even no notice of production of the original sale deeds is given to the defendants. Therefore, it was contended that the learned advocate for the plaintiff cannot ask questions on the basis of the photo copies of the sale deeds.

The trial court, after hearing both the sides, held that if at all, as per the contentions of the learned advocate for the defendants, photo copy of the document is not allowed to be referred during the cross-examination, the questions asked on the basis of the photo copy of the document may not be taken into consideration as admissible evidence, however, for that purpose, the cross-examination cannot be stalled.

5. The petitioners – defendants have challenged aforesaid findings of the trial court by filing present writ petition.

6. Heard learned advocate for the petitioners and learned advocate for the respondent. I have considered the rival submissions of the parties.

7. Learned advocate for the petitioners, in support of the petition relied on the decision of the Apex Court in ***Sou Moto Writ (CRL) No. (S) 1 of 2017*** as well as judgment of this Court in ***"Shantabai Jagannath Jaiswal and Others V/s Anandibai Satyanarayan Jaiswal and Others"*** 2007 (1) Bom. C.R. 991.

8. Perusal of the impugned order shows that the approach of the Trial Court is Correct. It has rightly held that if the learned advocate for the defendants can satisfy the court that photo copy of the document cannot be referred during cross-

examination, said portion of the evidence shall not be taken into consideration. No prejudice is likely to be caused to the petitioners by the said observations and the trial court will decide the admissibility of that portion of the cross-examination, which is conducted by learned advocate for the plaintiff on the basis of photo copy of sale deed, at the time of deciding the suit.

The decision in "***Shantabai Jaiswal***" (*supra*) is rendered in the factual background of that case, wherein this Court has held that if an objection is taken, the same has to be decided by the trial court at that stage only. In *sou moto Writ (CRL) No.1 of 2017*, (*supra*), the Hon'ble Apex Court has held that the ratio in "***Bipin Shantilal Panchal, V/s State of Gujarat***" 4 (2001) 3 SCC 1 is no more a good law and has observed in paragraph No. 15, thus -

"15. Apart from Section 148, there are other provisions of the Evidence Act (Sections 149-154) which define the ground rules for cross examination. During questioning, no doubt the counsel for the party seeking cross examination has considerable leeway; cross examination is not confined to matters in issue, but extends to all relevant facts. However, if the court is not empowered to rule, during the proceeding, whether a line of questioning is relevant, the danger lies in irrelevant, vague and speculative answers entering the record. Further, based on the answers to what (subsequently turn out to be irrelevant, vague or otherwise impermissible questions) more questions might be asked and answered. If this process were to be repeated in case of most witnesses, the record would cluttered with a jumble of irrelevant details, which at best can be distracting, and at worst, prejudicial to the accused. Therefore, this court is of opinion

that the view in Bipin Panchal should not be considered as binding. The presiding officer therefore, should decide objections to questions, during the course of the proceeding, or failing it at the end of the deposition of the concerned witness. This will result in de-cluttering the record, and, what is more, also have a salutary effect of preventing frivolous objections. In given cases, if the court is of the opinion that repeated objections have been taken, the remedy of costs depending on the nature of obstruction, and the proclivity of the line of questioning, may be resorted to. Accordingly, the practice mandated in Bipin Panchal shall stand modified in above terms.”

9. In the peculiar facts of the present case, I am of the considered view that the trial court has rightly dealt with the objections raised by the petitioners and was justified in holding that if at all photo copy cannot be referred while cross-examining the witness, the questions asked by relying on the photo copy of the document shall not be taken into consideration. As such, no fault can be found with the impugned order.

10. No illegality or perversity is found in the order impugned in the present writ petition to cause interference in the extraordinary writ jurisdiction of this Court. Writ petition is, therefore, dismissed. Rule stands discharged. No order as to costs. Interim relief, if any stands vacated forthwith.

[NITIN B. SURYAWANSHI]
JUDGE