

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

WRIT PETITION NO.12425 OF 2019

M/s.Rashid Khobadad & Ors. ..Petitioners
V/s.
Shri.Ali Jafari ..Respondent

Mr.Rakesh Reddy i/b Mr.Chirayu Panarkar for the Petitioners.

Mr.Siddharth C. Wakankar for the Respondent.

CORAM : C.V. BHADANG, J.

DATE : 25th JANUARY 2021

JUDGMENT :

1. Rule made returnable forthwith. The learned counsel for the respondent waives service. Heard finally by consent of parties.

2. The challenge in this petition is to the order dated 03rd August 2019 (Below Exhibit-152) and the order dated 07th November 2019 (Below Exhibit-159) passed by the learned Additional Judge, Small Causes Court at Pune in Civil Suit No.31 of 2007. That suit is instituted by the respondent against the petitioner and others.

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3. The petitioners happen to be the defendant Nos.1 to 5. The application below Exhibit-152 was filed by the petitioners for production of as many as 17 documents (as per list at page No.41). The learned Trial Court by the order dated 03rd August 2019 has allowed the production however has stipulated thus in paragraph 3 of the operative order:-

“By way of abundant caution it is clarified that, though the documents enlisted at Serial Nos.1 to 17 concerned with the suit premises but not concerned with the witness under cross-examination as he acquired right in respect of the suit property on 5th day of September 2006. Therefore, said document cannot be confronted to the witness under cross-examination for any purpose.”

4. The petitioners are aggrieved by the said stipulation, by which the Trial Court has observed that the said documents cannot be confronted to the witness who is under cross-examination. By the second order dated 07th November 2019, the petitioners have been barred from cross-examining the plaintiff's witness.

5. I have heard the learned counsel for the parties. Perused record.

6. It is undisputed that the suit premises have been purchased by the present plaintiff in the year 2006. A perusal of the list of the documents would show that the documents at Serial No.3 to 13 are all prior to 1988. The documents at Serial No.1 and 2 are photographs of the premises while those at Serial No.14 to 17 are the copy of the Partnership Deed of the defendant No.1 and the copy of the extract of the Register of partnership etc. Essentially the documents at Serial No.14 to 17 are pertaining to the defendant No.1 partnership.

7. Considering the overall circumstances, I do not find that any exception can be taken to the part of the impugned order dated 03rd August 2019. It is however, made clear that the petitioners shall be entitled to prove the said documents in accordance with law.

8. Coming to the second order dated 07th February 2019 in my considered view, only on account of the petitioners intention to challenge the first order, that the second order was suffered. In the interest of justice and fair trial I find that the said order can be set aside on payment of costs.

9. The learned counsel for the petitioners submits that the petitioners will not seek any further adjournment for the cross-examination of the witness. The statement so made is accepted.

10. The learned counsel for the respondent submits that in view of the fact that the cross-examination of the witness of the respondent was closed, the respondent has closed their side of the evidence. He submits that in the event the petitioners are permitted to cross-examination the witness, then the respondents be granted liberty to lead further evidence, if any.

11. In the result, the following order is passed.

ORDER

(i) The challenge to the order dated 03rd August 2019 (Below Exhibit-152) is hereby rejected, which shall however be subject to the entitlement of the petitioners to prove the documents as per rules.

(ii) The impugned order dated 07th November 2019 is hereby set aside subject to the petitioners paying costs of Rs.10,000/- (Rupees Ten Thousand only) to the respondent within two weeks from today.

(iii) If the costs are paid and the witness is cross-examined on behalf of the petitioners, it would be open to the respondent to lead further evidence, if any.

(iv) Rule is made partly absolute in the aforesaid terms.

C.V. BHADANG, J.