

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

WRIT PETITION NO.428 OF 2014

**MADHAVRAO WAMANRAO PATIL, SINCE DECEASED THROUGH L.RS.
SUMANBAI MADHAVRAO PATIL AND OTHERS.**

VERSUS

UDDHAV JANARTAN BARI AND ANOTHER

...

Advocate for Petitioner : Mr. S. P. Shah

...

CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 31st JANUARY, 2022

PRONOUNCED ON : 09th FEBRUARY, 2022

ORDER :

1. This petition challenges the order dated 11-10-2013 passed by the learned Joint Civil Judge Junior Division, Shirpur, Dist. Dhule, below Exhibit-109 in Regular Civil Suit No.38/2003.

2. The petitioner is the original plaintiff and the respondents are the original defendants in R.C.S. No.38/2003, filed by the plaintiff for recovery of possession of the suit property, which is in possession of the defendants since the year 1980. The defendants resisted the suit by filing written statement contending that the plaintiff is not the sole owner of the suit property and other heirs of the deceased Wamanrao are also co-owners. Therefore, the plaintiff alone cannot institute suit for recovery of possession.

3. It is the case of the plaintiff that in the year 1980 his father

Wamanrao borrowed Rs.16,000/- from the father of defendants and as a security of loan the father of defendants was put in possession of the suit property. Agreement was executed between Wamanrao and the father of defendants that possession of the suit property was to be returned to Wamanrao on repayment of Rs.16,000/- and Wamanrao will not pay interest of the loan amount and father of the defendants will not pay rent of the suit property. On 18-05-1992, father of the plaintiff Wamanrao passed away. The other heirs of Wamanrao relinquished their rights in undivided suit property in favour of the plaintiff. On 24-09-2001, some of the issues of Wamanro executed a registered relinquishment deed in favour of the plaintiff Madhavrao. Thereafter, the suit was filed. On 06-09-2004, heirs of Ramesh (predeceased son of Madhavrao) executed relinquishment deed in favour of the plaintiff Madhavrao. Accordingly, mutation entries were made in the city survey record on the basis of two relinquishment deeds dated 24-09-2001 and 06-09-2004. The plaintiff filed his affidavit on examination-in-chief on 24-07-2006. The cross-examination of the plaintiff was continued for a period of six years. On 29-09-2010, 'no cross' order was passed against the defendants, as the defendants failed to cross examine the plaintiff. On 25-10-2010, plaintiff filed pursis Exhibit-80 for closing his evidence, in view of the fact that 'no cross' order was passed against the defendant

and for about a month no steps were taken by the defendants for setting aside 'no cross' order. After this application was filed, the defendants filed application Exhibit-81 for setting aside 'no cross' order. By order dated 09-06-2011 'no cross' order was set aside by the trial Court and the plaintiff was cross examined. By the time, cross examination of plaintiff was conducted, he was running 78 years of age. According to the plaintiff, during the cross his memory failed and he deposed that there are no documents of relinquishment executed by Kalpanabai, wife of Ramesh.

4. The plaintiff on 22-08-2013 filed application Exhibit-109 for leave to produce on record the relinquishment deeds and city survey extract of the suit property. The said application is rejected by the trial Court. This rejection order is impugned in the present writ petition.

5. Heard the learned advocate for petitioner. Though the respondents are duly served at the time of admission as well as by the notice of final disposal, none appears for the respondents.

6. The ground for rejection of application Exhibit-109 filed by the plaintiff is that the same is filed after one year of closing of evidence by the plaintiff. The trial Court held that Order XIII Rule 2 of the Code of Civil Procedure casts duty upon the party concerned to show good cause for non production of the document before the settlement issues at the

suit. According to the trial Court, the plaintiff failed to show good cause for production of document.

7. Order XIII Rule 2 which casts duty upon party to show good cause has been deleted and Sub-Rule 3 is added to Order 14. It is stated that leave of the Court have to be obtained for production of such documents. The trial Court has failed to take into consideration the deletion of Order XIII Rule 2 and amendment to Sub-Rule 3 of Order 14, and on this ground the impugned order is liable to be quashed and set aside.

8. The trial Court has failed to consider that the defendants in their written statement have not denied the plaintiff's ownership over the suit property. Admittedly, the cross of the plaintiff was prolonged for a period of almost six years between July 2006 to July 2012. The plaintiff is old aged person. The trial Court has not recorded a finding that the documents sought to be produced by the plaintiff are manufactured. In view of these facts, I am of the view that the documents ought to have been permitted by the trial Court in the interest of justice and for proper adjudication of controversy involved. The trial Court ought to have granted the application filed by the petitioner. It is a settled legal position that rules of C.P.C. are the rules of procedure and they cannot be used to deny fair opportunity to the party

to prove its case.

9. While passing the impugned order, the trial Court has failed to take into consideration that the requirement of good cause to be shown under Order XIII Rule 2 has been deleted and by amendment Sub-Rule (3) to Order 14, leave of the Court has to be obtained for production of the documents.

10. This Court (Smt. Ranjana Desai, J.) in ***Chitrakala Fal Dessai Vs. Balu Marathe alias Mane s/o Jyotiba Marathe***, reported in **2006 (6) Mh.L.J. 427**, has held:-

“9. It is pertinent to note that Rule 2 of Order 13 requiring good cause to be shown has now been deleted and by amendment sub-rule (3) is added to Order 14 which states that leave of the Court has to be obtained for production of such documents. But even accepting that while persuading the Court to grant leave, a party has to show cause why the documents could not be produced earlier, not a very strict, restricted and pedantic view can be taken of this provision. Ultimately the Court will have to ensure that all documents which assist it to resolve the controversy before it in an efficient manner are available for its perusal. Unless the Court comes to a conclusion that the facts are so gross that the only inference that can be drawn from the conduct of the party is that the documents which are sought to be produced are manufactured, the Court should not generally deny leave to produce documents because ultimately it is always open to the other side to cross-examine the party who produces the documents to establish that the said documents are not relevant or that the case based on the said documents is not true. In my opinion in this case, at this stage, it is not possible to come to a conclusion that the documents at serial nos. (f) and (j) are manufactured. However, that does

not preclude the defendant, if he so desires, to cross-examine the plaintiff and persuade the Court to hold so. In the nature of things, no final opinion can be expressed by this Court on this aspect of the matter, at this stage.”

11. In the light of the aforesaid ratio and the reasons recorded hereinabove, the impugned order cannot sustain and the same is liable to be quashed and set aside. It is always open to the defendants to cross examine plaintiff and to persuade the Court to hold that the documents which the petitioner seeks to produce and rely upon are manufactured.

12. In the result, the writ petition is allowed in terms of prayer clause 'A'. The impugned order dated 11-10-2013 passed by the learned Joint Civil Judge Junior Division, Shirpur, Dist. Dhule, below Exhibit-109 in Regular Civil Suit No.38/2003, is hereby quashed and set aside.

13. Application Exhibit-109 in Regular Civil Suit No.38/2003 is allowed, subject to the petitioner paying cost of Rs.5,000/- (Rupees Five Thousand Only) to the defendants in the trial Court.

14. Considering the fact that the suit is of the year 2003, the same be disposed off by the trial Court within a period of six months from the date of receipt of writ of this order.

(NITIN B. SURYAWANSHI, J.)