

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2719 OF 2015

Vinayabai Vishwasrao Nandedkar and Another PETITIONERS

VERSUS

Godavari Hatmag Vastra Nirman Sahakri
Sanstha Ltd., Nanded and Others RESPONDENTS

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Mr. Milind M. Patil (Beedkar) Advocate for the petitioners
Mr. Sunil V. Kurundkar, Advocate for respondent No.1

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 20th JULY, 2022

ORDER :

1. Challenge in this petition is to the order passed by Joint Civil Judge, Senior Division, Nanded below Exhibit-160 in Regular Civil Suit No. 130 of 2012, thereby partly allowing the application filed by the petitioners for calling witnesses.

2. The petitioners – original plaintiffs have filed the suit for declaration and perpetual injunction against the respondent – defendants. The petitioners filed application Exhibit-160 contending that they want to examine eight witnesses, named in the application. Out of the said eight witnesses, witnesses No. 1 to 4 are the private witnesses and witnesses No.5 to 7 are the

Taluka Inspectors of Land Records, Nanded and Bhokar and witness No. 8 is the Assistant Director, Town Planning, Nanded. The petitioners, therefore, prayed for issuance of witness summons to the said witnesses, with a direction to witnesses No.5 to 8 to bring with them the relevant documents, mentioned in the application Exhibit-160.

3. By the impugned order, the Trial Court partly allowed the application and directed to issue witness summons only to witness No. 7, with a direction to him to bring original map of measurement / records as mentioned in the application Exhibit-160. The petitioners are aggrieved as the Trial Court has refused to issue witness summons to rest of the witnesses, named in the application Exhibit-160.

4. Heard learned advocate for the petitioners and learned advocate for respondent No.1

5. The petitioners are entitled to lead best possible evidence available with them, to prove their case. The Trial Court has ignored this aspect and the fact that reasonable and fair opportunity needs to be given to the plaintiffs to prove their case on merits. The reasons given by the Trial Court, while refusing to issue witness summons to other witnesses named in the

application Exhibit-160 are erroneous and unacceptable.

6. In the result, the writ petition is allowed in terms of prayer clause "B". The impugned order dated 28th January, 2015 passed by Joint Civil Judge, Senior Division, Nanded below Exhibit-160 in Regular Civil Suit No. 130 of 2012 is hereby quashed and set aside. Application Exhibit-160 is allowed. No order as to costs. Hearing of the suit is expedited.

[NITIN B. SURYAWANSHI]
JUDGE

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