

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7935 OF 2021

Ajay Anand Samant & Ors.

.. Petitioners

Versus

Vastu Anand Developers & Ors.

.. Respondents

.....

- Mr. Shailendra Kanetkar a/w Mr. Nilesh Modi and Mr. B.N. Jadhav i/by Rustamji & Ginwala for Petitioners
- Mr. S.H. Kankal, AGP for State

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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 19, 2022

P.C.:

1. Heard Mr. Kanetkar, learned Advocate for Petitioners and Mr. Kankal, learned AGP for State.

2. Perused the impugned order dated 11.12.2019. Application below Exh. 78 was filed by the Plaintiffs (Petitioners herein) before the learned Trial Court for leading primary evidence of the original documents in the custody of the Plaintiffs. However, it was stated that out of said documents, four documents were carbon copies, the originals of which were in the office of the Collector. That apart documents below the list provided by Plaintiffs in Exh. 46/33 is a delivery challan which was accepted by the learned Trial Court. However, in the operative part of the order, the Plaintiffs have been denied permission to lead secondary evidence in respect of these documents. Plaintiffs had also desired to refer to and rely upon a

certified copy of the will below Exh. 46/5. The learned Trial Court held that it cannot be marked as exhibit unless and until it is proved under the provisions of the Evidence Act.

3. Mr. Kanetkar, learned Advocate for Petitioners submitted that the grievance of the Petitioners is restricted to the documents stated in clause 2 of the operative part of the impugned order. Perusal of the original Application filed by Plaintiffs seeking permission of the Trial Court under Exh. 78 also refers to a document at Sr. No. 30 under Exh. 46. Admittedly, the learned Trial Court has missed out referring to the document below Exh. 46/30 in the impugned order. Mr. Kanetkar submitted that in respect of the aforesaid documents, Plaintiffs made Application under R.T.I. to the Competent / concerned Authority. Several orders have been passed by the Court in the present Writ Petition. These orders pertain to tracing of the said document in the office of the Competent Authority / Collector / Additional Collector at Thane. This entire exercise has been monitored by this Court leading to the passing of the order dated 02.05.2022.

4. Mr. Kankal, learned AGP informed the Court that appropriate action has already been taken against the erring officers and FIR has also been lodged. The statement is accepted. It is seen that as the Collector is seized of the matter, we now need to consider whether the

grievance of Petitioners can be redressed.

5. In the affidavit dated 28.04.2022, learned Collector has categorically stated that the concerned files are not traceable and they have gone missing from the Collector's office. Necessary certificate is also issued and appended to the said affidavit.

6. In view of the above, it would be in the interest of justice to permit the Petitioners / Plaintiffs who have filed Exh. 78 before the learned Trial Court to lead secondary evidence in respect of the aforementioned seven documents which find mention in clause 2 of the impugned order. It is clarified that in so far as the document at Sr. No. 46/30 is concerned, the same is the original document which the Petitioners seek to rely upon. Petitioners are permitted to do so in accordance with law.

7. In view of the above observations, the impugned order dated 11.12.2019 stands quashed and set aside. Application for leading secondary evidence Exh. 78 stands allowed.

8. Mr. Kanetkar submitted that Petitioners should be allowed to file fresh and appropriate Application for leading secondary evidence of the above documents referred to in Exh. 78. The request made is fair. In view of the Petitioners' request, they are permitted to file a fresh Application for leading secondary evidence in respect of the documents mentioned in Exh. 78. Mr. Kanetkar submitted that the

Petitioners shall file the Application within a period of four weeks from today. If such an Application is filed, the same shall be dealt with in accordance with law and the provisions of the Indian Evidence Act without being influenced by the observations made in the impugned order.

9. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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by RAVINDRA
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