

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

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**WRIT PETITION NO.11396 OF 2019
WITH
WRIT PETITION NO.10305 OF 2019**

Smt. Shantabai Prakash Shelke and Anr. ..Petitioners

Versus

Sou. Chhaya Pandurang Dubbanmardi
and Ors. ..Respondents

Mr. Siddheshwar B. Kalel, for the Petitioners.

Mr. Rohan Soman i/by Shivraj Patne, for the Respondent Nos.1 to
2A & 3.

CORAM : NITIN W. SAMBRE, J.

DATE : 16th FEBRUARY, 2022

PC.

1. The suit for partition being Special Civil Suit No.197 of 1998 came to be decreed on 15th January, 2002 against which the petitioners preferred an appeal in which provisions of Order XLI Rule 27 of the CPC are invoked for production of documents based on already existing pleadings. Another application seeking amendment to the written statement also came to be moved.

2. Both these applications are rejected vide impugned orders which are subject matter of these petitions.

3. Learned counsel for the petitioners would urge that

considering the defence set up by the petitioners in the written statement the plaintiffs/respondents are not taken by surprise, in case, if the permission to produce the documents is granted. He would further claim that such documents are certified copies of public documents which are placed on record and that being so, no prejudice will be caused to the other side, in case, if the petitioners are granted permission to produce documents on record and amend the written statement.

4. The prayer is opposed by the learned counsel for the respondents on the ground that the very ingredients of Order XLI Rule 27 of the CPC are not satisfied. It is brought to my notice that the petitioners have raised contradictory defence in the written statement particularly in paragraphs 8 and 10A which respectively speaks about already existing partition and theory of relinquishment. In addition, his contentions are though the documents were very much available being public documents, no convincing circumstances are spelt out which precluded or prevented the petitioners from producing the same during the trial of the suit. As such, rejection is prayed.

5. Considered submissions.

6. It is not in dispute that the petitioners have come out with the defence particularly in paragraph 8 of the written statement about already existing partition after death of petitioner's

husband *inter se* between herself, her father-in-law and brother-in-law. Revenue entries to that effect are reflected in the public documents which are sought to be produced on record. Certified copies of such documents are termed as the public documents and of course can be read in evidence for the purpose of deciding the appeal. As such, to that limited extent, this Court is inclined to show indulgence. No case for showing indulgence in extraordinary jurisdiction is made out, as the orders impugned are in tune with legal provision.

7. In the aforesaid background, following order is passed :-

- i) In Writ Petition No.10305 of 2019 wherein the petitioners/judgment debtors have sought amendment to the written statement which prayer is rejected vide impugned order dated 19th June, 2019 passed below Exh.30 stands dismissed.
- ii) In Writ Petition No.11396 of 2019 wherein Appellate Court has rejected the prayer for production of the documents is partly allowed to the extent that the petitioners are permitted to produce certified copies of the public documents which are issued by Revenue Authorities and the same is permitted to read during the course of hearing of the appeal.

8. With the above observations, both these petitions stand disposed of.

[NITIN W. SAMBRE, J.]