

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.921 OF 2021

Pradeep s/o Gangadharrao Birewar
Vs.

Ramnath s/o Shiva Gurnule (since deceased) through his LRs. and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Rohit Joshi, Advocate for petitioner.

Mr. A. A. Dhawas, Advocate for respondent no.1 (B).

CORAM : AVINASH G. GHAROTE, J.

DATE : 12/08/2022

1. The petition challenges the order dated 30.1.2019 (page 169) whereby an application under Order 41 Rule 27 of the Code of Civil Procedure (hereinafter referred as "the CPC") to produce the additional documents on record has been rejected. The ground for rejection is that though the documents are coming under the category of public documents they cannot be taken on record in a casual manner at the appellate stage and the existence of the conditions, as contemplated by Order 41 Rule 27 of the CPC have to be established. A perusal of the list of documents filed at page 65 would indicate that the documents which are sought to be placed on record, are maintenance Khasra of Plot No.11 and 11-A as well as the judgments in Regular Civil Suit No.127 of 1967 decided on 31.1.1970 and Regular Civil Appeal No.62 of 1970 and so also judgments in Regular Civil Suit No.235 of 1975 and

Regular Civil Appeal No.47 of 1982 and the copies of the plaint and written statement therein as well as orders of the Sub-Divisional Officer, Chandrapur in appeal.

2. It is contended by Mr. Joshi, learned counsel for the petitioner, that all these judgments and orders, relate to the land in question, and the respondents were equally parties to these legal proceedings, in which the rights as claimed by the respondents to the original land of Plot No.11 have been decided and therefore, were documents which were in fact, liable to be produced by respondents themselves on record before the learned trial Court which have not been so done, as a result of which, the conduct of the respondents suffers from intentional suppression of material documents having a bearing upon the matter in issue which has resulted in passing of the impugned judgment and decree which is challenged before the Appellate Court. He therefore, submits that the filing of these documents are necessary for the decision of the lis.

3. Mr. Dhawas, leaned counsel for the respondent no.1(B), opposes the same. He does not dispute that the respondents were parties to the above legal proceedings. It is however contended that the petitioners were aware of these documents and could have placed them on record before the trial Court itself,

and having not so done, the impugned order ought not to be disturbed.

4. The purpose of Order 41 Rule 27 of the CPC is to enable the Court to decide the lis correctly for which purpose in case it is felt that certain documents are germane for deciding the lis, the stage at which they are filed would be immaterial, for the reason that it is the duty of the Court, to decide the lis as per law, based upon a correct factual position. A perusal of the lis at Exh.39 would indicate, that the documents indicated therein would fall in the category of public documents and so also orders and judgments of the Court. In case, as contended that the judgments decide the rights of the respondents one way or other, it would be material for the Court to consider them before the lis is decided. That being the position, the impugned order dated 30.1.2019 (page 169) below Exh.24 is hereby quashed and set aside and the application below Exh.24 is allowed.

5. The writ petition is accordingly allowed. No costs.

JUDGE