

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

WRIT PETITION NO. 3539 OF 2021

Radheshyam Gupta and anr.

Vs.

Kishore Umaprasad Agrawal

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. Nitin Vyawahare, Advocate for petitioners.

Mr. S.O. Ahmed, Advocate for respondent.

CORAM : MANISH PITALE J.

DATE : 25.04.2022.

By this writ petition, the petitioners i.e. original defendants have challenged order dated 04.09.2021, passed by the Court of Civil Judge Junior Division, Telhara (hereinafter referred to as the 'Trial Court') whereby an application at Exhibit 37 filed on behalf of the respondent (original plaintiff) has been allowed and two documents have been directed to be exhibited.

2. Mr. Vyawahare, learned counsel appearing for the petitioners, submitted that the impugned order is only unsustainable for the reason that it has recorded reasons for allowing the application and

exhibiting the documents, beyond what was even stated in the application at Exhibit 37 filed on behalf of the respondent. It was submitted that no case was made out in the cryptic application filed by the respondent and yet the trial Court proceeded to allow the application, particularly in the absence of any pleadings to support such documents.

3. On the other hand, Mr. Ahmed, learned counsel appearing for the respondent submitted that in the impugned order itself the question of admissibility of the said documents was kept open and therefore, no prejudice would be caused to the petitioners if the impugned order is maintained. It was submitted that in the list of documents filed along with the plaint, the said two documents were indeed mentioned and originals were placed on record, but due to oversight, at the time of exhibiting documents the said two documents were left out. On this basis, it was submitted that the impugned order did not deserve to be interfered with.

4. In order to consider the rival contentions raised on behalf of the parties, it is necessary to peruse the application at Exhibit 37 filed on behalf of the respondent. Not only is the said application cryptic, but it is bereft of any reasons to support the

prayer made in the said application, other than stating that inadvertently marking the said two documents as exhibits was left out and hence, permission was sought for marking the documents as Exhibits.

5. Even though in the list of documents filed along with the plaint in the year 2017, the said two documents were indeed mentioned at serial Nos.5 & 6 and the originals having been placed on record is not seriously disputed, there is nothing on record to show that there were any pleadings on record to explain as to on what basis the respondent, as the plaintiff, was seeking to rely upon the said documents. The respondent was expected to state cogent reasons to support the prayer made in application at Exhibit 37.

6. Despite absence of any reasons stated in the application at Exhibit 37, other than the inadvertence stated therein, the Trial Court in the impugned order proceeded to hold that the said documents were thirty years old, that they had come from the custody of the plaintiff and that since under Section 90 of the Indian Evidence Act, there was presumptive value attached to these documents, the same could be exhibited. The aforesaid reasons

stated by the Trial Court cannot be sustained in the light of the contents of the application at Exhibit 37. The learned counsel for the petitioners is justified in raising objection to the manner in which the Trial Court proceeded to pass the impugned order.

7. In view of the above, it is found that the impugned order is unsustainable. But, at the same time, since the respondent had indeed referred to the aforesaid two documents in the list of documents filed along with the plaint and the originals of the same were placed on record, appropriate liberty needs to be reserved for the respondent in the interest of justice.

8. In view of the above, the writ petition is allowed.

9. The impugned order is quashed and set aside. The application at Exhibit 37 dismissed. Yet, liberty is reserved for the respondent to move an appropriate application in the context of the aforesaid documents, seeking permission of the Trial Court in a manner known to law for having the documents exhibited, in accordance with law.

10. Needless to say the petitioners would be at liberty to oppose such an application. This Court has not commented upon the merits of such a prayer that may be made on behalf of the respondent and therefore, it will be open for the Trial Court to take an appropriate view in the matter, strictly in accordance with law.

JUDGE

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