

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

41 WRIT PETITION NO.12126 OF 2021

**NEETA ABHIMAN PISAL AND OTHERS
VERSUS
KALYAN BHAURAO JOGDAND AND OTHERS**

...
Advocate for Petitioners : Mr. Girish K. Naik - Thigale

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CORAM : SHARMILA U. DESHMUKH, J.

DATE : 02-01-2023

PER COURT :

. Heard the learned counsel for petitioners.

2. By this petition, petitioners seek quashing of the order dated 01.02.2020 passed by 5th Jt. Civil Judge Senior Division, Beed in R.C.S. No.291 of 2018 below Exh.12. Petitioners are the original defendants in Regular Civil Suit No.291 of 2018 which is instituted by respondents in the Court of 5th Jt. Civil Judge Senior Division, Beed seeking a declaration of ownership and perpetual injunction as against petitioners herein.

3. It is the case of respondents (Orig. plaintiffs) in plaint that pursuant to the decree of the year 1957, respondents and others were granted 3/8th share and accordingly the

revenue records were mutated. Due to the consolidation scheme, Old Survey No.104 was given Gut No.446 and in the said gut number, one Madhukar Annasaheb Jogdand had a share of 0.08 guntha, which share was allotted in the court decree. Learned counsel for petitioners submits that petitioners claimed their right through the said Madhukar Annasaheb Jogdand, who was in adverse possession of 83 Are of the said Gut No.446 and since the decree of the year 1957 is the basis of the claim of Respondents, petitioners had moved an application seeking a direction to respondents to produce the documents pertaining to the partition decree which is allegedly passed in the year 1957.

4. I have considered the submissions made by the learned counsel for petitioners. Though respondents are served, none appears. The application of petitioners has been rejected on the ground that since burden lies upon respondents-plaintiffs to prove their case regarding ownership and possession over the suit land, in event the documents are not produced it will be to the prejudice to respondents and the petitioners are at liberty to get a certified copy of the decree.

5. The provisions of Order-VII, Rule-14 of the Code of Civil Procedure (hereinafter referred to as the 'CPC') provide that in event plaintiffs seek to rely upon a document in their possession in support of their claim, they are required to enter such document in a list and produce it along with the plaint. Considering the provisions of Order-VII, Rule-14 of the CPC, respondents cannot be permitted, without the leave of the Court, to produce the document at the time of the evidence in support of their claim as the same has neither been produced along with plaint nor a copy thereof has been tendered to petitioners.

6. Learned counsel for petitioners has drawn my attention to the provisions of Order-XI, Rule-14 of the CPC which provides that the Court can at any time order the production of document which is in the possession of any party relating to any matter in question in such suit as the Court shall think right. There is no dispute about the powers of the Court to order the production of document.

7. In my opinion, considering the provisions of CPC,

without tendering the copy of the document to the other party, the party seeking to rely upon the document cannot submit the same in evidence, except without the leave of the Court, and such document cannot be received in evidence. The burden is upon respondents to prove their claim in the manner they deem fit. I am not in agreement with the observations of the Trial Court that petitioners are at liberty to obtain certified copy of the decree, considering that no details of the proceedings have been furnished by respondents in the plaint.

8. In my view, as respondents will not be permitted to produce the said decree in their evidence without first furnishing a copy of the said document to the petitioners, I am not inclined to interfere with the impugned order. Writ Petition is accordingly dismissed.

(SHARMILA U. DESHMUKH, J.)