

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4662 OF 2023

Bhaskar S/o Bhijaku Matsagar
and another

.... Petitioners

Versus

Sarang S/o Rameshwar Shelke
and others

.... Respondents

.....

Mr. R.N. Dhakane, Advocate h/f Mr. S.S. Thombre, Advocate
for the Petitioners

Mr. J.M. Murkute, Advocate for Respondent No.1 and 3

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 09th OCTOBER, 2023

ORDER :

1. Leave to correct the prayer clause.
2. Petitioners are aggrieved by orders passed by learned Civil Judge, Senior Division, Vaijapur, below Exhibits 17 and 19 in Special Civil Suit No.9 of 2014.
3. Petitioners/plaintiffs filed suit for declaration and injunction in respect of suit property. Respondents/defendants opposed the suit by filing written statement. During the course of Trial, petitioners/plaintiffs filed application Exhibit-17, contending that, there was a conversation between Shantinath Fandade and Bhaskar Bhikaji Matsagar, at about 11.00 a.m. on

03/10/2012, in respect of sale transaction of the suit property. Plaintiffs, therefore, prayed for calling conversation/record from cellphone company. This application is rejected by the Trial Court, holding that first plaintiffs have to satisfy that such conversation is available with the concerned mobile company, and then only such application can be considered.

4. By filing application Exhibit-19, plaintiffs prayed for calling cheques issued by defendants, by which consideration amount was paid at the time of execution of sale deed, declaration on the basis of the same is prayed for in the suit. The said application is rejected by the Trial Court holding that, plaintiff can very well produce the record from the concerned bank or statement of their account, as well as their passbooks to establish their case of payment of consideration amount. Both orders are impugned in the present petition.

5. Heard learned advocate for petitioners and learned advocate for respondents. Perused the memo of writ petition, annexures thereto, and impugned orders.

6. By rejecting application Exhibit-17, Trial Court has denied fair opportunity to plaintiffs to produce best possible evidence in support of their case. In case, the cellphone company does not have record of conversation, as claimed by

plaintiffs, it may inform accordingly to the Trial Court, but this cannot be a ground to reject application Exhibit-17.

7. Impugned order passed below Exhibit-17 is therefore unsustainable in the facts of the present case.

8. Order passed below Exhibit-19 is not liable to be interfered, as the Trial Court has rightly held that plaintiffs can establish their case by producing account extracts, pass books, etc. Therefore, there is no need to call for the copies of cheques issued by plaintiffs to defendants. In this view of the matter, no interference is called for in the order passed below Exhibit-19.

9. In the result, writ petition is partly allowed.

10. Impugned order dated 20/02/2023 passed by learned Civil Judge, Senior Division, Vaijapur, below Exhibit-17 in Special Civil Suit No.9 of 2014, is hereby quashed and set aside.

11. Application Exhibit-17 is allowed.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane