

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5633 OF 2022

Avinash Ramesh Patil And Others

Petitioners

Versus

Subhash Shivaji Desale And Others

Respondents

Mr. G.S. Rane, Advocate for the petitioners.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 26th JUNE, 2023

ORDER :

1. Petitioners are aggrieved by the order passed by learned Civil Judge, Junior Division, Amalner, below Exhibit-208 in Regular Civil Suit No. 88/2015.

2. Petitioners/plaintiffs filed suit for declaration and permanent injunction in respect of the suit property. After the parties led their evidence and when the suit was at the stage of final argument, application Exhibit-208 was filed by the plaintiffs seeking permission to produce two documents i.e. form No. 8 of the Village Panchayat and certificate issued by the Grampanchayat to the effect that House No. 1203 and 1495 are one and the same. This application is rejected by the Trial Court on the ground that by way of production of these documents,

plaintiff is introducing totally new facts on record, which are not pleaded in his pleadings and the parties are not entitled to fill up the lacunas. This order is impugned in the present petition.

3. Heard the learned advocate for the petitioner. None appears for the respondents though duly served. Perused the memo of writ petition, annexures thereto, impugned order and the citations relied on by the learned advocate for the petitioner.

4. It is the specific case of the petitioners that he has purchased the suit property by way of registered sale deed, wherein city survey number is mentioned, whereas in the sale deed of the defendants gut number is mentioned. It is further pleaded that after giving city survey number, gut numbers are not to be considered as per the circular issued by the Government. In these facts, after recording of evidence of the parties was over and when the matter was at the stage of final arguments, application Exhibit-208 is moved for production of documents.

5. Learned advocate for the petitioners has rightly relied on Levaku Pedda Reddamma and Ors., vs. Gottumukkala Venkata Subbama & Anr., Civil Appeal No. 4096 of 2022 and

Nurallah Kamruddin Veljee vs. Vishwambhar Kashinath Palekar,

MANU/MH/0179/2016.

6. In Levaku Reddamma (supra), it is held:

"We find that the trial Court as well as the High Court have gravely erred in law in not permitting the defendants to produce documents, the relevance of which can be examined by the trial Court on the basis of the evidence to be led, but to deprive a party to the suit not to file documents even if there is some delay will lead to denial of justice.

It is well settled that rules of procedure are hand-maid of justice and, therefore, even if there is some delay, the trial Court should have imposed some costs rather than to decline the production of the documents itself."

7. In Nurallah Veljee (supra), learned Single Judge of this Court has held:

"4. It is now well settled law that the provisions of Order 7 Rule 14 of C.P.C are to be applied not in a technical manner, but, by taking a liberal view. The requirements which were previously there for showing the necessity of production of documents, are no longer there. Now, the provision requires that if the document cannot be produced by the plaintiff and the plaintiff seeks to produce some important document at a later stage, only leave of the Court is required to be taken. The meaning of expression appearing in Order 7 Rule 14(3) of C.P.C "a document which ought to be produced in Court by the plaintiff when the plaint is not produced or entered accordingly, shall not without the leave of the Court " has been understood to be having a wider connotation and has been interpreted to indicate the wide nature of discretionary power of the Court exercised for the purpose of determining the real controversy. If the Court is of the view that such documents being

produced at a subsequent stage are really required to adjudicate the dispute between parties effectively, the Court would have to exercise its discretion by allowing the production of additional documents. While exercising such a discretionary power, the Court has also to take into consideration the fact of prejudice to the other side. If the Court is of the view that no prejudice would be caused, the discretion must be exercised in favour of the plaintiff seeking benefit of this provision. These principles can also be seen to be laid down in the following cases:-

i. Smt. Chitrakala Fal Dessai Vs. Shri Balu Marathe alias Mane s/o Jyotiba Marathe, 2006(5) ALL MR 438,

ii. United India Insurance Co. Pvt. Ltd. Vs. M/s Madgavkar Salvage & Towage Co. Pvt. Ltd., 1995(1) Goa L.T. 1 and

iii. Vittal Govekar (since deceased) through LR's Vs. Madhukar B. Govekar, 1997 (1) Goa L.T. 266."

8. In the light of above ratio, the Trial Court erred in rejecting the application Exhibit- 208 on erroneous grounds. The Trial Court has failed to consider that production of these documents would enable the Trial Court to effectively adjudicate the dispute between the parties. Therefore, the impugned order cannot be sustained. Hence, the following order:

ORDER

- I) Writ petition is allowed.
- II) Impugned order dated 29.3.2022, passed by learned Civil Judge, Junior Division, Amalner, in Regular Civil Suit No. 88/2015, is hereby quashed and set aside.

- III) Application Exhibit-208 is allowed subject to petitioners paying costs of Rs. 10,000/- to the respondents in the Trial Court.
- IV) The defendants are at liberty to object the admissibility and relevancy of said documents and to take objection that documents are not proved in accordance with law.
- V) If these two documents are proved by the petitioners in accordance with law, the Trial Court shall consider the objection of the defendants about admissibility and relevancy of these documents, on merits, at the time of final adjudication of the suit.

[NITIN B. SURYAWANSHI, J.]