

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

21 WRIT PETITION NO.12812 OF 2022

**HARESHWAR GIRDHAR SONAWANE AND ANOTHER
VERSUS
YASHODABAI RAMBHAU SONWANE DECEASED THROUGH LRS
RAJENDARA RAMBHAU SONWANE AND OTHERS**

...

Advocate for Petitioners : Mr. Prafullasing H. Patil
Advocate for Respondent Nos.1-A, 1-C & 1-D : Mr. B.B. Kulkarni

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CORAM : SHARMILA U. DESHMUKH, J.

DATE : 20-02-2023

PER COURT :

. Learned advocate Mr. Kulkarni submits that he appears for respondent no.1B.

2. Learned advocate Mr. Patil for the petitioners seeks leave to delete respondent no.2.

3. Respondent no.2 be deleted at the risk of the petitioners.

4. Heard the learned advocate appearing for the respective parties.

5. The challenge in the petition is to the order dated 27.09.2022 rejecting the petitioners' application for permission to adduce additional evidence in appeal under Order-41, Rule-27 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC').

It is the petitioner's case that on 08.01.1999 Crop Protection Society of Chahardi had made a panchanama of the subject Gat Nos.585 and 587 and the petitioners seek to rely on the said panchanama and to examine the witnesses in support of the said panchanama. It was the case of the petitioners that there was measurement of the subject land by the Circle Officer and seek to rely upon the measurement map and to examine the witnesses in support of the measurement map. The panchanama and the measurement map are of the year 1999 when the proceeding i.e. Regular Civil Suit No.60 of 1998 was pending before the Trial Court. The Appellate Court has rejected the application holding that these documents were within the knowledge of the petitioners and in spite of sufficient opportunity being given, witnesses were not examined.

6. Learned advocate appearing for the petitioners submits that the said documents are necessary in order to adjudicate the controversy between the parties. He further submits that the imposition of costs would meet the interest of justice inasmuch as the proceedings have been remanded by the Appellate Court to the trial Court for consideration of certain evidence and the trial Court can be directed to permit the petitioners to examine the witnesses in support of the panchanama and the measurement map of the year 1999.

7. Per contra, the learned counsel for the respondents vehemently opposed the application. He submits that no interference is warranted as in spite of sufficient opportunity being granted to the petitioners to produce the evidence on record, the petitioners have failed to avail of this opportunity and as such at this stage there is no warrant to direct the trial Court to consider this aspect.

8. Considered the rival submission of the parties.

9. The admitted position is that the measurement map and the panchanama which are now sought to be proved are of the year 1999. The Regular Civil Suit No.60 of 1998 was instituted in the year 1998 and these documents were well within the knowledge of the petitioners. The Regular Civil Suit No.60 of 1998 was dismissed on 05.05.2014 as against which the appeals were preferred. During the pendency of the appeals, applications came to be filed by both the parties for leading additional evidence under the provisions of Order XLI, Rule-27 of the CPC in respect of the subsequent event of measurement being carried out in the year 2017. As the matter has already been remanded to the trial Court to record the evidence of the witnesses as regards the measurements which are carried out in

the year 2017, in my opinion, an opportunity is required to be given to the petitioners to prove their case by examining the witnesses to prove the panchanama of the year-1999 and the measurement map. This Court would not be inclined to grant this application, however considering that the matter has already been remanded to the trial Court, no prejudice will be caused to respondents if the entire evidence is considered by the trial Court in proper manner so as to decide the issues effectively. In my opinion, imposition of cost in the facts of the case would justify the remand of the matter to permit the petitioners to lead evidence in respect of the panchanama and the measurement map of the year 1999.

10. Writ Petition is allowed subject to payment of cost of Rs.5,000/- to be paid to the respondents.

11. The trial Court is directed to record the evidence of the witnesses of the documents below Exh.46 within a period of eight months from the date of receipt of Record & Proceedings.

12. Writ Petition stands allowed in the above terms.

(SHARMILA U. DESHMUKH, J.)