

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.983 OF 2019

Prakash Sopan Kale And Others

Petitioners

Versus

Nilkanth Dattatray Khadke And Others

Respondents

Mr. V.B. Patil, Advocate for the petitioners.

Mr. S.S. Bora, Advocate for respondent Nos. 1 to 7.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 2nd AUGUST, 2023

ORDER :

1. Petitioners are aggrieved by the order passed by learned 5th Joint Civil Judge, Junior Division, Jalgaon, below Exhibit- 130 in Regular Civil Suit No. 352/2014, thereby allowing the application filed by the respondents/plaintiffs for production of documents.

2. Respondents No. 1 to 7/original plaintiffs filed suit for mandatory injunction. Petitioners being defendants opposed the suit by filing written statement. Thereafter, issues were framed and Plaintiff No. 1 and 5 led their respective evidence and they were cross examined. Thereafter, evidence close purshis was filed by the plaintiffs.

3. Petitioners/defendants examined their first witness namely Dilip Rajaram Patil, who was cross examined by the plaintiffs. Thereafter, advocate for the defendants sought permission to re-examine the said witness, which was granted. After completion of re-examination, plaintiffs filed application Exhibit-130 seeking production of certified copies of documents which are issued by the office of defendant's witness. Said application was opposed by the defendants. Trial Court allowed the application. Hence, the present petition.

4. Heard the learned advocate for the petitioners and learned advocate for the respondents No. 1 to 7. Perused the memo of writ petition, its annexures and the impugned order.

5. Learned advocate for the petitioners assailed the impugned order on the ground that plaintiffs ought to have produced these documents at earlier point of time along with list of documents at the stage of filing of documents. Now the plaintiffs are trying to fill up lacunae in their case.

6. Admittedly, the documents sought to be produced by plaintiffs are map and letter issued by the office of Land Records, Jalgaon. These documents were sought to be confronted to the

witness of defendants during his cross examination. It is settled legal position that the document if referred to the witness during the cross examination, has to be exhibited.

7. Admittedly, the witness examined by the defendants is serving at Land Record Office, Jalgaon as Superintendent and documents produced by the plaintiffs are issued by Land Record Office, Jalgaon. Plaintiffs therefore are entitled to confront said documents issued by Land Record Office, Jalgaon, to this witness since he is acquainted with said documents. Trial Court, therefore, has rightly allowed the production of documents holding that production of documents can be permitted by the Court at any stage of proceeding. Trial Court has further observed that documents sought to be produced are relevant in the matter and the witness is acquainted with them. Trial Court has therefore allowed the production of documents.

8. There is no merit in the submission of learned advocate for the petitioners that documents ought to have been produced at the time of production of documents and plaintiffs are trying to fill up lacunae in their case.

9. Plaintiffs are entitled to confront these documents to

the witness, since those are issued by office of the witness. Since, the order passed by the Trial Court is in consonance with the settled legal position, no illegality or perversity is found in the order impugned in the present petition. Writ petition being devoid of merit is dismissed, with liberty to the petitioners to challenge proof, admissibility and relevancy of said documents at the time of hearing of the suit.

[NITIN B. SURYAWANSHI, J.]