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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9412 OF 2022

Bebi Krushna Jagtap and Ors.

.. Petitioners

Versus

~~Sarjerao Babu Kanchan~~

Since Deceased through his legal heirs

Ranjana Kisan Shinde and Ors.

.. Respondents

.....

- Mr. Shriram Kulkarni, Advocate for Petitioner.
- Mr. Sanjiv Sawant a/w. Mr. Abhishek Matkar and Ms. Samiksha Mane, Advocates for Respondent Nos.1 to 6.

.....

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 24, 2023.

P.C.:

1. Heard Mr. Kulkarni, learned Advocate appearing for Petitioners and Mr. Sawant, learned Advocate appearing for Respondent Nos.1 to 6 for some time.

2. Perused the record of the case.

3. The order impugned in the present Writ Petition dated 21.01.2020 is passed below Exhibit-205 and Exhibit-2013 in Regular Civil Suit No.108 of 2002 by the learned Joint Civil Judge Junior Division, Saswad (for short "**Trial Court**"). By the impugned order, the Application filed by Defendants seeking reconstruction of record of six original documents which went missing from the record and file of the learned Trial Court was rejected.

4. Both the learned Advocates are *ad idem* that the six documents are namely three mortgage deeds, two sale deeds and one receipt of digging of the well. The details of these six documents are found at page No.147 below Exhibit-68 in Regular Civil Suit No.108 of 2002. There is no doubt about the identification of these documents.

5. Mr. Kulkarni would submit the aforementioned six documents were filed by Defendants below Exhibit-68 in the record of Regular Civil Suit No.108 of 2002. It needs to be noted that Regular Civil Suit No.108 of 2002 has been filed for removal of encroachment in respect of an area ad-measuring 2H 24R in Gat No.1643. Admittedly, there is a companion Suit i.e. Regular Civil suit No.92 of 2002 filed by Respondent Nos.1 to 6 seeking permanent injunction in respect of the adjacent Gat No.1642 which is in their possession.

6. Mr. Kulkarni submitted that the aforementioned six documents were carried out from the record and file of Regular Civil Suit No.108 of 2002 for being produced at the time of evidence in Regular Civil Suit No.92 of 2002 and thereafter they have been misplaced and not traceable.

7. In that view of the matter, Defendants filed Exhibits-205, 210 and 213 before the learned Trial Court seeking reconstruction of the said documents as well as marking them in evidence.

8. Mr. Sawant, learned Advocate appearing for Respondent

Nos.1 to 6 who are the Plaintiffs in both the Suits namely Regular Civil Suit No.108 of 2002 and Regular Civil Suit No.92 of 2002 does not refute the position that the aforementioned six original documents were infact filed on the record and file of Regular Civil Suit No.108 of 2002 below Exhibit-68. Perusal of Exhibit-68 also reveals that the aforementioned original documents were in custody of Court and also bears the noting and signature of the Nazir of the Court certifying that the originals have been filed in the Court.

9. In view of the above, the Applications filed by Defendants below Exhibit-205 and Exhibit-210 ought to have been allowed by the learned Trial Court as for no default of theirs, they cannot be denied the benefit of the original documents which they had filed with the Court. Undoubtedly, it would be a right in contending that the contents of the said documents would need to be proved in execution by the Defendants strictly under the provisions of the Indian Evidence Act. Merely marking of the document in Evidence does not prove the correctness of its contents.

10. Mr. Kulkarni fairly does not deny this position. At this stage, assuming for the sake of argument that if the said original documents were available in the Court, then the same would have obviously been marked as documents in Evidence.

11. Considering the above position, the said documents

therefore are required to be marked in evidence. Needless to state that the contents of the said documents will have to be proved by the party relying upon the same strictly in accordance with law.

12. In that view of the matter, the aforementioned six documents are marked as Exhibit “X-1 to Exhibit X-6” and the same shall be taken on record and considered by the learned Trial Court.

13. Needless to state that all contentions of the parties including making an Application for proving the contents and execution of the aforementioned six documents, if any, are expressly kept open.

14. At the request of both the learned Advocates since both the Suits i.e. Regular Civil Suit No.108 of 2002 and Regular Civil Suit No.92 of 2002 are pending since long, the learned Trial Court is requested to dispose of both the above Suits within a period of six (6) months from today.

15. The impugned order dated 21.01.2020 passed below Exhibit-205 and Exhibit-2013 and the order dated 24.03.2022 passed below Exhibit-210, Exhibit-217 and Exhibit-242 are quashed and set aside.

16. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]