

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION (WP) NO. 8419/2022

Chandrakala Purushottam Ikhe
Aged about 62 years, Occ. Agriculturist,
R/o Near Rathod Petrol Pump,
Rukmini Nagar, Amravati.

..... PETITIONER

// VERSUS //

1. Amrut Babansa Gulhane,
Aged about 50 years, Occ. Money Lender,
R/o Morshi, Tah. Morshi, Dist. Amravati.

2. Shrikant Purushottam Ikhe,
Aged about 36 years, Occ. Agriculturist,
R/o Near Rathod Petrol Pump,
Rukmini Nagar, Amravati.

.... RESPONDENT(S)

Mr. B.N. Mohata, Advocate for the petitioner
Mr. P.D. Sharma, Advocate for respondent no. 1
Respondent no. 2 is served

CORAM : A.S. KILOR, J.

DATED : 21/04/2023

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Heard the learned counsel for the parties.

2. The order dated 29.09.2022 rejecting the application below Exh. 185 for exhibiting copy of deposition recorded in Special Civil Suit No. 49/2004 is under challenge in this writ petition.

3. The petitioner herein is the original defendant no. 1 and respondent no. 1 herein is the original plaintiff, who filed a suit for possession of the agricultural land.

4. It is the case of the defendants that the plaintiff is a money lender and as such stand was raised in the written statement and in support of the said pleadings document namely copy of deposition in Special Civil Suit No. 49/2004 was filed on record. Accordingly, the defendants moved an application for exhibiting the said document namely copy of the oral evidence of one Dadarao Ramarao Khadse filed in Special Civil Suit No. 49/2004 wherein, there is a reference of money lending transactions between husband of the defendant no 1 and plaintiff.

5. The said application came to be rejected though the Court has observed that it is a public document. The aforesaid application was rejected on the ground that neither the defendants nor the plaintiff was party to the said suit i.e. Special Suit No. 49/2004 and further that the defendants have already closed the evidence on 26.07.2022 and thereafter, with the permission of the Court examined two witnesses. It is observed that after the examination of two witnesses by the defendants the application came to be filed for exhibiting the documents. The Court further observed that as the matter is time-bound, it has to be decided before 27.10.2022. Lastly, the Court observed that

said documents have no relevance. Accordingly, the application was rejected.

6. After going through the record, it is evident that though the plaintiff was not party to the suit i.e. Special Civil Suit No. 49/2004, however, in the deposition of the witness in the said suit it has come that the transaction between the plaintiff and husband of the defendant no. 1 was of money lending.

7. The said document has relevance as far as the pleadings made in the written statement of the defendants are concerned.

8. Thus, the findings recorded by the Trial Court that it has no relevancy is erroneous. Furthermore, it is a settled law that exhibiting document does not mean that the contents and the genuineness of the document is proved.

9. In these circumstances, no prejudice would be caused to the plaintiff if the said document is exhibited. In the circumstances, in my opinion, the Trial Court has committed error in rejecting the application Exh. 185. Accordingly, I pass the following order:-

(a) The writ petition is allowed.

(b) The order below Exh. 185 dated 29.09.2022 passed by Civil Judge Junior Division, Morshi in Regular Civil Suit No. 05/2010 is hereby quashed and set aside.

(c) The application Exh. 185 in Regular Civil Suit No. 5/2010 is hereby allowed.

10. Rule is made absolute in the aforesaid terms with no order as to costs.

(JUDGE)