



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 7774 of 2019

Shri Bapurao s/o Ramaji Yede
Aged - 65 Yrs., Occ. Retired,
R/o Tuljapur, Tahsil Seloo
District – Wardha.

L.R.s of petitioner

Amendment
as per Court
order dtd.
8-8-2024.

- (a) Smt. Kamal wd/o Bapurao Yede,
Age-60 yrs, Occ-Housewife
- (b) Mr. Praful S/o Bapurao Yede,
Age-37 yrs, occ-Agri.
- (c) Ku. Ashwini D/o Bapurao Yede,
Age-35 yrs, occ-private.
LRs No. (a) to (c) R/o-Behind
Laxmi Bhavan, Sant
Dnyaneshwar Ward,
Rithe colony, Hinganghat,
Tah- Hinganghat, Dist-Wardha.
- (d) Sau. Vandana w/o Pankaj
Yelekar, Age-39 yrs, occ-private,
R/o-B-101 Om Jay Balaji Hights
CHS LTD Mira Bhayandar road,
near Ramdev Park, Mira road
East, Mira Bhayandar,
Thane (M.S.) - 401107

... Petitioners

- Versus -

- (1) The State of Maharashtra,
Through the Collector,
Wardha, District Wardha.
- (2) The Naib Tahsildar,
Sindi (Railway) Tahsil -
Seloo, District – Wardha

(3) Shri Surendrakumar s/o
Gopalrao Dhawad
Age 62 Yrs., Occ. Retired,
R/o. Manewada Road, Near
Bakde Sabhagruh, Nagpur.
Tah. & Dist. Nagpur.

... Respondents

Mr. S. K. Thengri, Advocate for the petitioners
Mr. S. B. Bissa, AGP for respondent nos. 1 and 2
Mr. K. B. Ambilwade, Advocate for respondent no. 3

CORAM : ANIL L. PANSARE, J.

DATED : 09-09-2024

ORAL JUDGMENT

Heard.

2. Rule. Rule made returnable forthwith. Head finally with consent of learned counsel appearing for the parties.

3. The challenge is to order dated 10-10-2019 passed by the first appellate Court permitting respondent no. 3 – plaintiff to adduce additional evidence in terms of Order 41 Rule 27 of the Civil Procedure Code, 1908 (for short ‘Code’). The first appellate Court has found that the application is essentially for the purpose of marking of public documents (maps and renumbering parchas) as Exhibits and that marking them is essential for the just decision of the matter.

4. If one goes through the pleadings in the application filed by respondent no. 3 (Annexure 8), what has been stated is that trial Court has misread the survey numbers and thus reached erroneous finding and it has become necessary to bring on record certain certified copies of maps and renumbering parchas, which are public documents.

5. The respondent no. 3 has not disclosed the details of the documents. The respondent no. 3, however, proceeds further to aver that after reading the judgment passed by the trial Court, he made a search and applied for certified copies. Respondent no. 3 has, however, not disclosed why did not he make search and obtain certified copies during the course of the trial.

6. A bare statement is made that the documents were not available during trial.

7. I am informed that these documents are as old as of the year 1889-1890. Thus, it cannot be said that these documents were not available during trial.

8. The first appellate Court has not taken into account clause (aa) of sub-rule (1) of Rule 27 of Order 41 of the Code which requires the party seeking to produce additional evidence to establish that

despite due diligence, he could not produce the evidence which has been sought to be produced.

9. Having not considered the same, the order impugned will not stand the scrutiny of law. Writ petition is accordingly allowed. Order dated 10-10-2019 passed by District Judge-1, Wardha below Exhibit 42 in R.C.A. NO. 61/2010 is quashed and set aside.

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

(Anil L. Pansare, J.)

wasnik