



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR
WRIT PETITION NO. 1942 OF 2024**

Ramesh R. Mahajan

...Petitioner

Versus

Anil D. Tanksale & Ors.

...Respondents

Mr. A.S. Jaiswal Sr. Advocate a/w. Mr. R.P. Joshi for the Petitioner.
Mr. N. R. Bhishikar for Respondent Nos.1 to 19.

**CORAM : N. R. BORKAR, J.
DATE : 30 JULY 2024.**

PC:-

1. By the orders impugned in this petition, the trial Court has rejected the applications filed by the petitioner/plaintiff No.2 at Exhibit-433, 439 and 440 in Special Civil Suit No. 53 of 1990. The petitioner is a legal representative of the original plaintiff Ramchandra Mahajan. He filed the suit for possession and mandatory injunction based on the lease deed dated 21.7.1875 which is in 'Modi script'. The suit was initially dismissed. The matter travelled upto the Hon'ble Supreme Court and the Hon'ble Supreme Court by order dated 9.7.2007 in Civil Appeal No. 2120 of 2017 remanded the matter back to the trial Court with the following directions:

"15. Similarly, we also think that it would be in the interests of justice, to give the plaintiff an opportunity to produce the original lease deed of the year 1875 or to adduce evidence in support of his claim to get marked in evidence a certified copy of the lease deed as secondary evidence. Such an opportunity will also be granted by the trial Court to the plaintiff. Similarly the plaintiff will also be given an opportunity to get the property comprised in the lease deed of 1875 identified and to get demarcated the disputed portion in the entire property by issuing an appropriate commission for that purpose. Thus on the whole we are satisfied that the matter requires to be remanded to

the trial Court for a fresh trial and disposal.”

2. The learned senior advocate for the petitioner submits that the very same lease deed dated 21.7.1875 is the subject matter of another suit being Special Civil Suit No. 857 of 1992 and there the plaintiffs have examined the necessary witnesses to prove the lease deed in question. It is submitted that the witness who translated the lease deed from Modi script to Marathi language and was examined in other suit had expired and thus application at Exhibit-439 was moved to examine one Gajanan Salgaokar, who is also expert in Modi script. It is submitted that considering the facts and circumstances of the case, the trial Court ought to have allowed the applications filed by the petitioner.

3. On the other hand, the learned counsel for the contesting respondents submits that there is no explanation as to why the application was not moved when the evidence of plaintiffs was going on. It is submitted that the application came to be moved at the stage of final argument. It is submitted that no interference is thus called for in the impugned orders.

4. Considering the facts and circumstances of the case and more particularly in the light of order passed by the Hon'ble Supreme Court, the trial Court ought not to have rejected the application at Exhibit-439 only on the ground of delay. The order impugned is thus set aside. The trial Court shall permit the petitioner/plaintiff to lead evidence in terms of application at Exhibit-439.

5. Considering the fact that the suit is of the year 1990, the trial Court shall endeavour to decide the suit within a period of 9 months from the date of receipt of copy of this order.
6. The Petition is disposed of in the aforesaid terms.
7. Pending application(s), if any, are disposed of.

(N.R. BORKAR, J.)