IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

938 WRIT PETITION NO. 13089 OF 2024

NARAYAN DINBAJI CHAWARE DIED LRS GUMFA NARAYAN CHAWARE AND OTHERS
VERSUS
NILKANTH KACHARUJI DEKATE DIED LRS MALTI NILKANTH DEKATE AND OTHERS
...
Mr. P. K. Palve h/f. Mr. D. K. Dagadkhair, Advocate for the Petitioners
Mr. Anil S. Bajaj, Advocate for Respondent No.7
...

CORAM : AJIT B. KADETHANKAR, J.
DATED : 03.11.2026

P.C. :-

. Mr. P. K. Palve h/f. Mr. D. K. Dagadkhair, learned Advocate for the petitioners submits that the Court notice is published in the newspaper and a set of the newspaper is already deposited in the Registry.

2. Feeling aggrieved by the judgment and order dated 18.07.2024 passed by the learned 6th Joint Civil Judge, Senior Division, Aurangabad on an application below Exhibit 151, the plaintiffs are before this Court.

3. Considering the short controversy involved in the matter, the parties to the petition would request this Court to hear the matter finally. Accordingly, I have heard the learned

advocates for the respective parties for final disposal at the admission stage.

4. Regular Civil Suit No.731 of 2011 came to be filed by the present petitioners against the defendants seeking a decree in the form of dual injunctions. One injunction was sought against the defendants restraining them from obstructing, interfering or encroaching upon the peaceful possession of the plaintiffs over the suit properties. Another injunction restraining the defendants from alienating or creating third-party interests over the suit properties was also sought.

5. The defendants filed their written statement and defended the suit. The plaintiffs filed applications at Exhibits 145, 149 and 151 before the trial Court for the reasons mentioned therein.

6. By the application filed at Exhibit 145, the petitioners prayed for assigning exhibit numbers to the documents particularly the certified copy of registered Sale Deed No.4924 dated 17.10.1983 and the original copy of the document prepared under the orders of the Tahsildar on 04.11.1986. The said application came to be rejected by the trial Court.

7. Another application at Exhibit 149 was filed by the plaintiffs to recall the order dated 14.03.2024 whereby the application at Exhibit 145 was rejected. The said application also came to be turned down by the learned trial Court by order dated 18.06.2024 observing that the case was not fit to review the earlier order.

8. Subsequently, a third and probably the last application at Exhibit 151 was filed thereby requesting the trial Court to issue witness summons to the Joint Sub-Registrar, Class-II, Aurangabad No.1 for the purpose of proving the document namely registered Sale Deed No.4924 dated 17.10.1983. This application also came to be turned down by the learned trial Court by order dated 18.07.2024.

9. The petitioners have challenged all the applications and the orders passed by the trial Court by filing the present petition. A composite prayer is made in prayer clause (B) thereby calling in question the legality and validity of the orders passed by the trial Court below Exhibits 145, 149 and 151.

10. Mr. P. K. Palve h/f. Mr. D. K. Dagadkhair, learned advocate for the petitioners submits that the trial Court has adopted a very hyper-technical approach and has not

considered that accepting the documents and proving the same are two different things. He would submit that the plaintiffs have candidly stated that Sale Deed No.4924 of 1983 is a very vital document for adjudication of the civil rights before the Court. Thus, since the sale deed pertains to the year 1983, the plaintiffs could not procure the original copy of the sale document, and its original or certified copy was not available at the earlier stage. It is further submitted that since the document is a very old one and was not available to the plaintiffs despite exercising due diligence to procure the original thereof, the applications were absolutely justified. Thus, he submits that the writ petition be allowed and, at least, the application at Exhibit 151 be allowed.

11. Mr. A. S. Bajaj, learned advocate for the respondents would vehemently oppose the prayer. It is submitted that the trial Court has given elaborate reasons while dismissing each application. Mr. Bajaj submits that the first application was rejected by giving cogent reasons whereas the second application was merely in the form of a review application. The trial Court examined the merits of the second application and rightly rejected the same. So far as the third application is concerned, Mr. Bajaj, learned advocate for the respondents

submits that the trial Court in paragraphs 4 and 5 has rightly recorded its findings while rejecting the application. Thus, he prays for dismissal of the petition.

12. I have heard both the learned advocates for the respective parties extensively.

13. In fact, application Exhibit 145 was filed for assigning an exhibit number to the certified copy of registered Sale Deed No.4924 dated 17.10.1983. The said application was filed for the reason that the plaintiffs did not have the original copy of the said sale deed. The trial Court while rejecting the said application observed that since the plaintiffs had failed to produce the original sale deed dated 17.10.1983, the application for assigning an exhibit number to the certified copy could not be considered.

14. Since this was the main initial prayer which came to be turned down by the trial Court, the petitioners/plaintiffs were constrained to file subsequent applications. Obviously, in view of the settled position of law, unless the provisions of Sections 64 and 65 of the Indian Evidence Act as applicable, are complied with and the original document is not produced, the trial Court cannot be said to have erred in rejecting those applications at the relevant time.

15. However, so far as the last application at Exhibit 151 is concerned, I am of the considered view that the same could be allowed to meet the ends of justice. It is the consistent case of the plaintiffs that the document was executed in the year 1983 and, as per the prevailing practice followed by the State authorities particularly the Sub-Registrars of the district, the original documents were handed over immediately to the parties to the instrument.

16. In view of the above, I find that allowing the application at Exhibit 151 would serve the purpose of resolving the controversy as also for better adjudication of the suit.

17. Hence, I deem it appropriate to partly allow the petition thereby directing the trial Court to issue witness summons to the Joint Sub-Registrar, Class-II, Aurangabad No.1 for the purpose of producing registered Sale Deed No.4924 dated 17.10.1983.

18. To that extent, the petition stands partly allowed.

19. Considering that the suit is an old one, the trial Court is requested to decide the same as expeditiously as possible.

(AJIT B. KADETHANKAR, J.)

PRW