

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1285 OF 2014

Baburao s/o Daulatrao More,
Age: 61 years, Occ: Agril,
R/o. Htkyal, Tq. Kandhar,
Dist. Nanded.

...Petitioner

versus

Vasant s/o Madhavrao Pawar,
Age: 54 years, Occ: Agri.,
R/o. Htkyal, Tq. Kandhar,
Dist. Nanded.

...Respondent

.....
Mr. Amit A. Mukhedkar, Advocate for petitioner.
Mr. A.M. Gaikwad, Advocate for respondent.
.....

CORAM : N.W. SAMBRE, J.

DATED : 19TH JANUARY, 2015

PER COURT :

. Present petitioner-plaintiff filed Regular Civil Suit No. 76 of 2007 for declaration of ownership, possession and perpetual injunction. After evidence in the suit has begun, the evidence of witness No. 2 of the plaintiff was over. The plaintiff failed to produce third witness, which has prompted learned trial Court to pass the order on his application for adjournment on 06/12/2013, rejecting the said application for adjournment.

2. Learned Counsel for the petitioner has invited my attention to the fact that his right to lead evidence was also foreclosed by virtue of impugned order dated 28/01/2014. As such, present writ petition.

3. Mr. Gaikwad, learned Counsel for the respondent has invited my attention to the provisions of Order 16 of Code of Civil Procedure so as to canvass that it was incumbent on the part of the petitioner to furnish list of witnesses within period of 15 days from the date of framing of issues, which the petitioner has failed. He further urged that it was the duty of the petitioner to come out with specific case while seeking adjournment. Accordingly, no case for interference is made out.

4. Having perused the impugned order dated 28/01/2014, it is noticed that by the said order, learned trial Court has rejected both the applications Exhibit-51 and 53 preferred by the petitioner-plaintiff, wherein he has sought permission of the Court to set aside the order passed below Exhibit-48 i.e. the order whereby trial Court has rejected the application for grant of adjournment for production of witnesses. The another application which is rejected by learned trial Court i.e. Exhibit-53 is in relation to list of witnesses, which is sought to be produced by the petitioner before the Court. It is stated in the

said application by the petitioner that he has produced list of witnesses on earlier occasion, however, same could not be traced out on record.

5. It appears that the suit is at the stage of recording of evidence.

6. In my opinion, though Rule-1 of Order 16 of Code of Civil Procedure mandates the plaintiff to file list of witnesses within 15 days from the date of settlement of issues, the said period can be extended by learned Court upon appropriate reasons being disclosed to that effect.

7. In the present case, as is noticed that the plaintiff has come out with the case that he has placed on record the list of witnesses within time stipulated i.e., within 15 days from the date of settlement of issues, however, same cannot be placed on record.

8. Having regard to the reasons recorded and in the interest of justice, it will be appropriate that the petitioner be given chance to proceed further for recording evidence. In that view of the matter, the order dated 06/12/2013 passed below Exhibit-48, and order dated 28/01/2014 passed below Exhibits-51 and 53 are hereby

set aside, subject to payment of costs of Rs.3000/- (Rs. Three thousand only) to be paid within period of two weeks before trial Court. Payment of cost is condition precedent.

9. The writ petition stands disposed of, in above terms.

[N.W. SAMBRE, J.]