

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

WRIT PETITION NO.4341 OF 2014

Ayub Vazir Pathan,
Aged about 44 years,
Occupation Agriculture,
R/o Village Bhalgaon,
Taluka Gangapur,
District Aurangabad

..Petitioner

Versus

Bashir s/o Kammu Pathan,
Aged about 59 years,
Occu. Labour, R/o Village
Bhalgaon, Taluka Gangapur,
District Aurangabad

..Respondent

Mr A.D. Kasliwal, Advocate for petitioner

CORAM : N.W. SAMBRE, J.

DATE : 1st December 2015

PER COURT

Heard Mr Kasliwal, learned Counsel for the petitioner.

2. Pursuant to the provisions of Order II, Rule 4 and 6 of Code of Civil Procedure, an application Exhibit 123 in Regular Civil Suit No.199 of 2003 came to be filed by the present petitioner – original defendant No.8 seeking directions to the plaintiff No.1 to file separate suit in relation to the suit property.

3. The said application came to be rejected by the learned Court below by order dated 25th February 2013, as such present petition.

4. Mr Kasliwal, learned Counsel for petitioner – defendant No.8 would urge that the reason cited for rejection of application Exh.123 is

not germane to the cause, as according to him, the provisions under Order II, Rule 4 and 6 empowers the learned trial Court to order separate trials. According to him, in view of the satisfaction of requirement made therein, the learned Court below should have allowed the application by ordering separate trials, particularly when the relief claimed are in relation to two separate properties and against the separate suit of defendant.

5. I have gone through the contents of application Exh.123 seeking separate trials. I have also considered the observations made by learned trial Court whereby the application came to be rejected.

6. Learned trial Court though has furnished the reason that issue is raised at a belated stage, there was no objection to that in the written statement, however, it is required to be noted herein that the provisions of Order II, Rule 6 are to the convenience to the Court to decide as to whether there is requirement of two separate trials, particularly in the background of relief claimed in the suit.

7. Here, it is noticed that the learned trial Court was ready to decide the suit as it was filed. Apart from above, the prayer in the plaint is quite clear, wherein the plaintiff has prayed to put him in possession of land from the defendant. Apart from above, there are no specific pleadings as against each of the defendants so as to form an opinion that two separate causes are sought to be tried in one plaint.

8. In view of above, in my opinion, no case for interference, particularly in the light of provisions of Order II, Rule 6 is made out. Petition fails, stands dismissed.

(N.W. SAMBRE, J.)

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