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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5550 OF 2014

Baburao s/o Bhanudas Wahul PETITIONER
Age – 51 years, Occ – Agri and Private Service
R/o Limgaon / Nanda
Taluka – Paithan, District – Aurangabad
At present residing at Mumbai

VERSUS

1. Shankar s/o Savaleram Raut RESPONDENTS
Age – 59 years, Occ- Agri.
R/o Nandar, Taluka – Pathan,
District – Aurangabad
2. Saraswatibai w/o Sudhakar Raut
Age – 39 years, Occ – Agri
R/o As above
3. Ravindra s/o Shivajirao Kale,
Age – 44 years, Occ – Agri.
R/o As above
4. Shankar s/o Dnyandeo Raut
Age – 64 years, Occ – Agri
R/o As above
5. Yashwant s/o Ganpatrao Kale,
Age – 44 years, Occ – Agri.
R/o As above
6. Sonaji s/o Anaji Kale
Age – 59 years, Occ – Agri
R/o As above
7. Kaduba s/o Pandurang Magare,
Age – 49 years, Occ – Agri.
R/o As above

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Mr. Nitin T. Tribhuwan, Advocate for the petitioner

Mr. A. S. Shelke, Advocate for respondent No.1
Mr. K. B. Jadhav, Advocate for respondents No.2 to 5

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 22nd JUNE, 2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. The petitioner - original plaintiff in Regular Civil Suit No. 17 of 2005, is before this court aggrieved by rejection of his request under applications Exhibit-106 and Exhibit-108 as well as granting of application Exhibit-105, filed on behalf of original defendant No.1.

3. The petitioner has moved the civil court for possession and mesne profits concerning property bearing gut No. 391/3 situated at village Nandar, Taluka-Paithan, District-Aurangabad, seeking removal of certain alleged encroachment over the same. It appears that trial of the suit had considerably progressed and evidence had almost been completed. As a matter of fact, it is being contended that, arguments were also over. At that stage, application Exhibit-104 was moved by present petitioner seeking production of sale deed dated 8th May, 2000 concerning the suit

property. The court had allowed production. Although the sale deed had been referred to in the pleadings, the original sale deed could not be produced while the suit was being tried, for various reasons, *inter alia*, as contained in application Exhibit-104.

4. Application Exhibit-105 had been moved by defendant No.1 requesting the court not to exhibit said sale deed. As such, applications Exhibit-106 and Exhibit-108 were moved by the petitioner to exhibit the document and to allow him to adduce evidence.

5. The defendants purportedly opposed the request of the plaintiff, particularly with reference to deletion of Rule 17-A of Order XVIII of the Code of Civil Procedure. It was sought to be contended that the court, in the circumstances, may not be able to consider the request of the petitioner under the impugned order. With reference to the citations relied upon on behalf of the petitioner, the court considered that since those pertain to Order XLI, Rule 27 of the Code of Civil Procedure, would not be able to hold field, and as such, the court went on to reject the request of the petitioner.

6. Learned advocate for the petitioner further argued that the

petitioner is a blind person and is residing at Mumbai and as such, due consideration to this aspect also deserves to be given.

7. In this case, having regard to the fact that the request of the petitioner to produce the sale deed appears to have been granted, the further request, after following due procedure for the same, could have been considered by the court, having regard to that it would sub-serve the cause of justice rather than detaining the considerations under the applications on technical grounds. It may be considered that though rule 17-A of Order XVIII of the Civil Procedure Code is deleted, this court has earlier on in a decision considered that that does not take away power of court to allow such request in order to subserve cause of justice.

8. In view of that, request underlying applications Exhibit-106 and Exhibit-108 is declined more on technicalities, I do not think it would be appropriate to be oblivious of the intent underlying procedural aspects is to bring about and facilitate expeditious conduct of trial of suit and not to obstruct the same for technical reasons. Here, it appears that the sale deed produced is material document having bearing on merits of the matter. In such a case, I deem it appropriate to allow applications Exhibit-106 and

Exhibit-108, and reject the application Exhibit-105, in the broader interest of justice.

9. Writ petition, as such, stands allowed. Rule is made absolute in terms of prayer clause "B". Application Exhibit-105 stands rejected and applications Exhibit-106 and Exhibit-108 stand allowed, subject to payment of costs of Rs.5000/-. Costs be deposited in the trial court within a period of three weeks from that date of receipt of writ of this order. The amount of costs be equally distributed amongst defendants No.1, 2, 5 and 6. Since the suit being of 2005, it is desirable that the same be proceeded with expeditiously.

[SUNIL P. DESHMUKH, J.]