

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

WRIT PETITION NO.8192 OF 2014

Sayyed Taheroddin s/o Sayyed
Gaus Mohiyoddin, Age 61 years,
Occupation agriculture,
R/o Saigaon, Taluka Ambajogai,
District Beed

.. Petitioner
(Orig.Plaintiff)

Versus

1. The State of Maharashtra,
through the Collector, Beed
2. The Tahsildar, Tahsil office,
Ambajogai, District Beed
3. Grampanchayat office,
Saigaon, through Gramsevak,
Gram Vistar Adhikari, Saigaon,
Taluka Ambajogai, Dist.Beed
4. Sayed Shafiyoddin Sayed
Bashiroddin, Age 50 years,
Occupation agriculture
5. Sayed Maimoddin Sayed
Bashiroddin, Age 35 years,

Both R/o Saigaon,
Taluka Ambajogai
(Now to be served through
G.P.A. Shri Mohd.Mahafej
Hussain s/o Ahmed Hussain
r/o Saigaon, Taluka Ambajogai)

.. Respondents
(Orig.Defendants)

Mr Vivek Bhavthankar, Advocate for petitioner
Mrs B.B.Gunjal, A.G.P. For respondents 1 and 2
Mr G.V.Mohekar, Advocate for respondent No.3
Mr S.S.Kazi, Advocate for respondents No.4 and 5

CORAM : SUNIL P.DESHMUKH, J.

DATE : 3rd February 2015

ORAL JUDGMENT

1. Rule. Rule made returnable forthwith and with the consent of parties, heard finally.

2. This writ petition is preferred by original plaintiff against common order dated 2nd September 2014 passed below Exh.101 and Exh.104 in Regular Civil Suit No.157 of 2013 by learned Civil Judge, Senior Division, Ambajogai.

3. Regular Civil Suit No.157 of 2013 has been filed by the petitioner for declaration that he is owner in possession of land ad-measuring 2 R in Gat No.100, situated at Saigaon, Taluka Ambajogai and that he is in peaceful possession of the same. However, defendants No.4 and 5 are causing interference in the same and trying to obstruct his enjoyment of said property. Plaintiff's further contention is, defendants No.4 and 5, in collusion with defendant No.3 Gramsevak in Grampanchayat, have got their names recorded in record of rights in respect of disputed property. As against that, the defendants' contention is that they have purchased the concerned land from brother of the plaintiff and their names are duly shown in the record of rights and they have obtained permission for construction on said property from the Grampanchayat and accordingly, construction is almost completed.

4. While plaintiff's temporary injunction application had been rejected by learned Judge of trial court, said rejection was maintained at the appellate stage by the District Court. It is further being submitted on behalf of petitioner that this Court, however, had directed the parties to maintain status quo.

5. It appears that the trial of the suit had progressed. Further, the plaintiff has closed his evidence, so is the case of defendants. While

the matter is pending for final hearing, aforesaid applications Exh.101 and 104 came to be moved for production of inward-outward register, papers in respect of house bearing No.749 as well as seeking mandate to defendant No.4 or his lawyer to file an affidavit that he had not received notices dated 15th May 2013 and 28th May 2013. Upon hearing the parties, learned Judge of the trial court has rejected the applications finding that in a natural course of events, the order as referred to under Section 138 of the Evidence Act could have been followed, however, plaintiff has not made any efforts in that direction. It is observed by learned Judge of trial Court that the plaintiff could have applied for calling Gramsevak, Grampanchayat, Saigaon as witness but, he did not do so although it was for the plaintiff to produce said notices.

6. Learned counsel Mr Bhavthankar, before this Court argues that taking into account the provisions of Order XI, particularly Rule 14 thereof, it is incumbent that the court ought to have allowed the application for production of documents. It is the contention of Mr Bhavthankar that it is a fact that the permission for construction given to defendants No.4 and 5 had been cancelled by Grampanchayat and that, photocopy of the document has been produced on record, which has been exhibited and as such, it was imperative to have the application allowed.

7. On the other hand, learned counsel for respondents No.4 and 5 submits that the defendants have denied existence of the notices as well as the document cancelling the construction permission. Neither

there is source depicting existence of the document nor the plaintiff has disclosed such source, as to from where he has produced the photocopy of the alleged document. It is further being submitted that the application filed, is ill-motivated, while the suit reached the stage of hearing and after the evidence on either side was over, the application is moved with an attempt to prolong the matter.

8. Having regard to that the defendants have denied the existence of document and plaintiff is not in a position to give the source of photocopy of alleged documents, I do not consider that the trial court has erred in declining to accede to the request in the applications Exhs.101 and 104. In the situation, I am not inclined to interfere with the impugned order passed by learned Judge of the trial Court which cannot be said to be unreasoned and perverse.

8. Writ Petition, as such, stands dismissed. Rule discharged.

(SUNIL P.DESHMUKH, J.)

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