

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.11360 OF 2014
IN
SECOND APPEAL NO.820 OF 2009

CHANDRAKANT VISHWANATH AUTADE

APPLICANT

VERSUS

DUSHYANT PRAMODKUMAR TIWARI
AND OTHERS

RESPONDENTS

Mr.R.B.Temak h/f Mr.P.R.Patil, Advocate for the applicant.
Mr.S.A.Ambad, AGP for respondent/State.
Mr.S.R.Kadar, Advocate for respondent No.6.

(CORAM : RAVINDRA V. GHUGE, J.)
DATE : 27/03/2015

PER COURT :

1. The applicant has, by this application, prayed for an out of turn early final hearing of second appeal Nos.820/2009 to 823/2009. It is canvassed that the substantive question of law, as has been framed by this Court while admitting these second appeals, is as under :-

“Whether the properties are the private properties granted through the Muntakhab relied upon by the appellants or that they are the properties of the Charitable Trust ?”

2. The applicant submits that the issue involved is already settled

by this Court in the judgment dated 26/07/1990 in W.P.No.944/1990.

3. The applicant has specifically stated in paragraph No.2 of the application that these matters can be heard finally, as is evident from the order dated 10/06/2011 passed by this Court in the second appeals.

4. Learned Advocates for the respondents have vehemently opposed the request for an out of turn final hearing of these second appeals. It is stated that these second appeals were heard finally at length earlier. However, this applicant has resorted to levelling allegations against his lawyer so as to succeed in adjourning the matter. They have relied upon the order passed by this Court (Coram :- S.V.Gangapurwala, J.) dated 05/10/2010, which is as under :-

“1. All these Appeals are heard at length. Mr.M.V.Deshpande and Mr.P.D.Suryawanshi, the learned counsel for the appellants have concluded their arguments. Mr.Bhavthankar, the learned counsel for the respondents has also advanced his arguments on Thursday and Monday. Today when the matter is called out, the application is submitted by the respondents making allegations against their lawyer and have sought time of one month for making alternate arrangement. The said application

is marked as 'X' for identification.

2. The said allegations appear to be patently incorrect. It seems they are made only to adjourn the matter. However, as justice should not only be done, but should also appear to have been done, I adjourn the matter by imposing costs of Rs.5,000/- in each Second Appeal on the respondents who have given the application for adjournment. The present Second Appeals to come up in regular course.

3. Mr.Bhavthankar, the learned counsel for the respondents has placed on record the communication received from the respondents. The same is marked as 'X-1' for identification. Mr.Bhavthankar, in view of the said application, prays for discharge. In light of the same, Mr.Bhavthankar, the learned counsel is discharged. The respondents are present in the Court hall."

5. Learned Advocates, therefore, submit that on account of the vexatious conduct of the applicant, he cannot make a request for an out of turn early final hearing of the second appeals.

6. Having considered the submissions of both the sides, conduct of the applicant is evident from the order passed by this Court dated 05/10/2010, especially the observations in paragraph Nos. 2 and 3.

7. In view of the same, the applicant is not entitled to make the request for an out of turn final hearing of these 4 second appeals. As such, the request of the applicant Chandrakant Vishwanath Autade, stands rejected.

(RAVINDRA V. GHUGE, J.)