

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8155 OF 2014

PRALHAD MAHADEO GHORPADE
VERSUS
MADHUKAR GINYANDEO NAIKWADE AND OTHERS

.....
Advocate for petitioner : Mr. Kale Gopal D.

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CORAM : V. K. JADHAV, J.

DATED : 18th FEBRUARY, 2015

PER COURT :-

1. Heard the learned counsel for petitioner.
2. The petitioner is the original plaintiff, instituted a suit for declaration of ownership of land with perpetual injunction. The defendant No. 1 has not filed his written statement and therefore, the suit was ordered to proceed against him without his written statement on 26.09.2013. The defendant No. 1 filed an application (Exh. 73) for setting aside the 'no W.S. order' passed on 25.04.2013. The petitioner/original plaintiff has strongly resisted the said application. The learned Joint Civil Judge (Junior Division) has allowed the application at Exh. 73 and permitted the defendant No. 1 to file written statement on record with cost of Rs.1000/- to be paid to the plaintiff. Hence this Writ Petition.

3. The learned counsel for the petitioner submits that the respondent No. 1 / original defendant No. 1, though stated in his application that he had been to sugar factory for cutting sugar cane, remained present in a criminal matter pending before the J.M.F.C., Pathri. However, the suit is instituted for declaration of ownership and perpetual injunction. It is the case of the petitioner/original plaintiff that the defendant Nos. 2 and 3 have sold the suit land to defendant No. 1. Thus, considering the facts on record, for proper and final adjudication of the dispute between the parties, it is necessary to dispose of the suit on merits. The learned Judge of the Trial Court has rightly considered this position and allowed the application at Exh. 73.

4. In view of this, no interference is called for in the impugned order. The Writ Petition is hereby dismissed. There shall be no order as to costs.

(V. K. JADHAV, J.)

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aaa/