

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6949 OF 2014

Bajirao Rajaram Patil,
Age 65 years, Occ. Agriculture
R/o. Khirdi, Tq. Raver,
District Jalgaon

...Petitioner

versus

1. Sau. Shantabai Sudhakar Mahajan
Age 50 years, Occ. Agriculture
R/o. At post Nimbol, Tq. Raver
District Jalgaon

2. Sau. Lilabai Gambhir Mahajan,
Age 62 years, Occ. Household
R/o. Patondi, Tq. Muktainagar,
District Jalgaon

3. Sadashiv Kashiram Patil,
Age major, Occ. Agriculture

4. Gopal Bajirao Patil,
Age major, Occ. Agriculture

R. Nos. 3 and 4
R/o. At and Post. Khirdi (Bk),
Tq. Raver, District Jalgaon

...Respondents

.....
Mr. Vijay B. Patil, advocate for the petitioner
Mr. P.R. Katneshwarkar, advocate for respondent No.1
Mr. A.G. Talhar, advocate for respondent No.4.
.....

CORAM : V. K. JADHAV, J.

DATED: 20.01.2016

ORAL JUDGMENT:-

1. Rule. Rule returnable forthwith. By consent, heard finally.

2. Respondent No.1-original plaintiff has instituted Regular Civil Suit No. 28 of 2004 for decree of partition and separate possession. The petitioner-defendant No.1 has strongly resisted the claim by filing his written statement. Respondent No.1-plaintiff has filed his affidavit of evidence and subjected to cross examination and also petitioner-defendant No.1 has filed his affidavit of evidence and subjected to cross examination. It has come in the evidence of petitioner-defendant No.1 that he has purchased the land Gat No. 810 to the extent of 81 R from one Kusumbai Patil on 1.6.1990 under registered sale deed and on that basis, mutation entry No. 1277 came to be effected. The petitioner-original defendant No.1 has also come with a pleading that the suit property has been partitioned in the year 1989 and accordingly a memorandum of partition was prepared on 14.8.1989 to that effect, which is signed by respondent No.1-plaintiff. According to the petitioner-defendant No.1, though the said documents i.e. the sale deed and the memorandum of partition were handed over to his counsel, the same were not produced before the Court. Consequently, the petitioner-defendant No.1 filed an application Exh.109 for production of those documents with leave of the Court. Learned Joint Civil Judge, Junior Division, Raver, after hearing the parties, rejected the said application by impugned order dated 14.7.2014. Hence, this writ petition.

3. Learned counsel for the petitioner submits that the said documents are necessary for proper adjudication of suit. Petitioner-defendant No.1 has specifically pleaded that the suit property is self acquired property. In order to substantiate the same, petitioner-defendant No.1 has deposed about sale deed executed in his favour by one Kusumbai Patil. Petitioner-defendant No.1 has purchased the said land under registered sale deed from said Kusumbai Patil for valuable consideration. The same is not placed on record though it was handed over to the counsel, who is subsequently discharged in the matter before the trial court. Learned counsel further submits that so far as document pertaining to the memorandum of partition is concerned, the same was prepared in two sets on two separate stamps, each retained by the parties to the memorandum of partition. Learned counsel further submits that the document at Exh.103 was referred to during the course of cross examination of petitioner-defendant No.1 wherein, date of purchase of stamps is mentioned as 14.11.1989, though the memorandum of partition was prepared on 14.8.1989. Learned counsel, by producing the index of purchase of stamps, pointed out that both the stamp papers used for the said memorandum of partition were purchased on the same date i.e. on 14.8.1989 vide Sr. Nos. 710 and 711 respectively. However, when the document Exh.103 was confronted to the petitioner-defendant No.1, he got confused because of the said date of purchase which is

wrongly mentioned and therefore, some evasive answers were given by him. Learned counsel thus submits that in the light of that, production of original memorandum of partition is essential for just disposal of the suit.

4. Learned counsel for respondent No.1-original plaintiff submits that petitioner-defendant No.1, though specifically asked to produce the said documents by filing application Exh.33, he has refused to produce the documents on record for the reason that the application Exh.33 could have been filed by petitioner-defendant No. 1 prior to framing of issues. Learned counsel further submits that the petitioner-defendant No.1 has deliberately not produced the original memorandum of partition at the earlier stage. The petitioner-original defendant No.1 is producing the same at later stage to fill up the lacuna. Learned counsel further submits that the petitioner defendant No.1 is preparing false and fabricated documents of memorandum of partition. Learned counsel further submits that though the memorandum of partition is produced on record and after referring it in the cross examination of petitioner-defendant No.1, marked Exh.103, after closing of evidence, the petitioner defendant No.1 has produced the so called original memorandum of partition with some ulterior motive. Learned counsel further submits that so far as production of document of sale deed on record is concerned,

there is no pleading to that effect. Learned counsel thus submits that the trial court has rightly rejected the application Exh.109. The impugned order thus calls for no interference and writ petition is liable to be dismissed.

5. Prima facie, it appears that the memorandum of partition Exh. 103 which is referred to the petitioner-defendant No.1 in his cross examination, bears incorrect date of purchase of the stamps. The document of memorandum of partition sought to be produced alongwith application Exh.109 is nothing but a second set of original memorandum of partition. On careful perusal of the index, it appears that both the stamps i.e. the stamp used for Exh.103 and the stamp used for document which is sought to be produced alongwith application Exh.109, were purchased on one and the same date i.e. on 14.8.1989 vide Sr. No. 710 and 711 respectively. In the light of that, production of second set of memorandum of partition is essential for just disposal of the suit. Furthermore, so far as production of document of sale deed is concerned, there is pleading by petitioner-defendant No.1 that the suit property is his self acquired property and therefore, evidence which is sought to be adduced by producing sale deed is not required to be pleaded. It is well settled that all rules of procedure are handmaid of justice. The language of procedural law may be liberal or stringent but the fact remains that

the object of prescribing procedure is to advance cause for substantial justice.

6. In the light of above discussion, the impugned order calls for an interference. Learned counsel for the respondent, at this stage, submits that the suit is of the year 2004 and therefore, the trial court may be directed to expedite the hearing of suit. In view of above discussion, I proceed to pass the following order:-

O R D E R

- I. Writ petition is hereby allowed.
- II. The order dated 14.7.2014, passed by learned Joint Civil Judge, Junior Division, Raver below Exh. 109 in Regular Civil Suit No. 28 of 2004 is hereby quashed and set aside.
- III. Application Exh.109 in Regular Civil Suit No. 28 of 2004 filed by the petitioner-defendant No.1 is hereby allowed with liberty to respondent No.1-original plaintiff to recall the petitioner-defendant No.1 for further cross examination in the light of production of document as per application at Exh.109.
- IV. The trial court is hereby directed to dispose of Regular Civil Suit No. 28 of 2004 as expeditiously as possible, and preferably within a period of six months.

- V. Writ petition is disposed of accordingly. Rule made absolute in the above terms. In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

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