

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1046 OF 2016

DADARAO RUNJABA ALHAT
VERSUS
VARSHA W/O DNYANESHWAR ALHAT AND ANOTHER

.....
Advocate for the petitioner: Mr. N.D. Sonwane
Advocate for the respondents: Mr. Shaikh M.G. Mustafa
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CORAM : V. K. JADHAV, J.
DATED : 4th FEBRUARY, 2016

PER COURT:-

1. By consent of learned counsel for the parties, heard finally.
2. The respondents-plaintiffs instituted a suit for partition and separate possession. The petitioner-original defendant has filed an application Exh.55 requesting the court to accept the sale deed executed on 25.10.1969, as the said document is 30 years old. The respondents-plaintiffs have opposed the said application. The trial court by its impugned order dated 18.8.2015 rejected the said application. Hence, this writ petition.
3. Learned counsel for the petitioner submits that the document sale deed came to be executed in favour of father of the petitioner-defendant. Undisputably, the document is of 30 years old. Learned counsel submits that the petitioner-defendant being the son, the

document is in his custody. Learned counsel submits that father of the petitioner still alive and resides with the petitioner. Learned counsel submits that therefore, the document i.e. sale deed which is of 30 years old has come before the Court from proper custody.

4. Learned counsel for the respondents-plaintiffs submits that there is no evidence indicating that there is joint family of the petitioner-defendant and his father. The petitioner's father is still alive. These documents have not come before the Court from proper custody. Counsel submits that the learned Judge of the trial court has rightly rejected the said application. No interference is called for in the impugned order.

5. There is specific pleading on behalf of the petitioner-defendant that even though the father of the petitioner-defendant is alive, in suit for partition and separate possession, the respondent No.1-plaintiff, who is daughter-in-law of the petitioner-defendant, has not impleaded the father of the petitioner-defendant, as party to the suit. Learned counsel further submits that the petitioner-defendant has also pleaded that no partition is effected between him and his father. In view of this, I do not think that the trial court has correctly observed that the document has not come through proper custody. The impugned order therefor, is required to be quashed and set aside.

Hence, the following order:-

O R D E R

- I. Writ petition is hereby allowed.
- II. The order dated 18.8.2015 passed below Exh.55 in R.C.S. No. 631 of 2012, by the learned IIInd Joint, Civil Judge, Junior Division, Vaijapur is hereby quashed and set aside.
- III. The application Exh.55 in R.C.S. No. 631 of 2012 is hereby allowed.
- IV. Writ petition is disposed of. In the circumstances there shall be no order as to costs.

(V. K. JADHAV, J.)

rlj/