

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

Writ Petition No.2734 of 2015

Naseem w/o Shaikh Matin.

.. Petitioner.

Versus

Kubrabee w/o Sayyed Ahmed
And Others.

.. Respondents.

Shri. Suhas B. Ghute, Advocate, for petitioner.

Shri. V.H. Salunke, Advocate, for respondent Nos.2A to 2-C, 2-E, 2-F, 2-G, 2-H.

Smt. Ansari Razwana Tabassum, Advocate, for respondent No.6.

CORAM: T.V. NALAWADE, J.

DATE : 25 AUGUST 2016

ORDER:

1) The petition is filed by the original defendant No.6 to challenge the order made on 11-12-2014 by Civil Judge, Junior Division, Badnapur, District Jalna in Regular Civil Suit No.30/2008. Heard both sides.

2) The suit is filed for relief of partition and separate possession by one Kubabee. Original defendant No.1 Shaikh Chand was brother of the plaintiff and Shaikh Banne was their father. The present matter is only in respect of suit property described as "A" viz. 71 R portion of Gat No.171. It is the case of the plaintiff that in the past portion of 81 R from this Gat was purchased by her from Shaikh Banne under registered sale deed and after the death of Shaikh Banne she is entitled to have share in the portion which was with Shaikh Banne. It is the case of the plaintiff that after the death of Shaikh Banne, defendant No.1 Shaikh Chand created some false record by representing to the authority that he was the only heir of Shaikh Banne and then he transferred 71 R portion to defendant No.6 when he had no right. It is the case of the present petitioner, original defendant No.6, that on the record there was name of Shaikh Chand as the owner and so she purchased this portion under registered sale deed dated 30-7-2004 from Shaikh Chand. The suit was filed in the year 2008.

3) By filing application at Exhibit 157, defendant No.6 prayed for permission to lead additional evidence. Evidence was already closed by both the sides. This application was made on 27-11-2014. She wants to show that during his life time, Shaikh Banne had made some document in favour of Shaikh Chand and the document like affidavit made before the Notary that under the notarized document, he had given one house property bearing Village Panchayat No.479 to Shaikh Chand. Defendant No.6 wants to prove one so called compromise document to show that in the past power of attorney was given by Shaikh Banne to Shaikh Chand and on the basis of said power of attorney Shaikh Chand had given the property to his wife, Salimabee Shaikh Chand and it was 60 R portion of Gat No.171. According to defendant No.6, such compromise document was prepared in RTS inquiry proceeding filed under the Maharashtra Land Revenue Code. It appears that some mutations were made in favour of wife of Shaikh Chand in the revenue record and due to that the matter was pending before the revenue authority.

4) Even if the aforesaid record which defendant No.6 wants to produce on record is considered as it is, that record does not show that the property was sold by Shaikh Banne to the wife of Shaikh Chand or the property was gifted by him to the wife of Shaikh Chand. There is no record to show that legally the property was transferred in the name of wife of Shaikh Chand. The parties are Muslim and so Shaikh Banne could have given the property even by gift. In absence of such record, it can be said that Shaikh Chand or his wife had no power to sell the share of the plaintiff to defendant No.6. Thus, nothing can be achieved if permission is given to defendant No.6 to produce the aforesaid record. This Court holds that it is not possible to interfere in the order made by the trial Court. The application was made at the fag-end of the suit. In the result, the petition is dismissed.

Sd/-
(T.V. NALAWADE, J.)

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