

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.3092 OF 2012

Laxman s/o Shankar Mali,
Age : 50 yrs., Occ.: Nil.,
R/o Anand Nagar, Dapka,
Tq. Nilanga, Dist. Latur.
...Petitioner...

Versus

- 1 Namdeo s/o Tukaram Jadhav,
Age : 48 yrs., Occ.: Business,
R/o. Arya Samaj, Vishnubhai
Patel Marg, Santacruz (West),
Mumbai, Tq & Dist. Mumbai.
- 2 Pramod s/o Wamanrao Kshirsagar,
Age : 40 yrs., Occ.: Assistant
Engineer, MSEDG, Kinwat,
Dist. Nanded
R/o Assistant Engineer, MSEDG,
Kinwat, Dist. Nanded.
- 3 Baburao s/o Ramanappa Mahajan,
Age : 55 yrs., Occ.: Business,
R/o Mahajan Medical Store,
Main Road, Anandmuni Chowk,
Opp. Baheti Building, Nilanga,
Tq. Nilanga, Dist. Latur.
- 4 Sunil s/o Baburao Mane,
Age : 43 yrs., Occ.: Agriculture,
R/o Pimalwadi (Jewari),
Tq. Nilanga, Dist. Latur.
- 5 Sow. Balika w/o Satish Jadhav,
Age : 33 yrs., Occ.: Household,
R/o. Anand Nagar, Dapka (Nilanga),
Opp. Bank Colony, Nilanga.

- 2 -

6 Dr. Satish s/o Ramrao Jadhav,
Age : 44 yrs., Occ.: Doctor,
R/o Anand Nagar, Dapka (Nilanga),
Opp. Bank Colony, Nilanga.
...Respondents...

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Shri M.M. Patil(Beedkar), Advocate for petitioner.

Respondent nos.1 & 2 served.

Shri S.B. Gastgar, Advocate for respondent nos.3 to 6.

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CORAM: RAVINDRA V. GHUGE, J.

DATE: 08.03.2016

ORAL JUDGMENT :

1] Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2] This Court by order dated 10.4.2012 had granted an ad-interim stay to the further proceedings in the suit. The said order is still in operation.

3] The petitioner is aggrieved by order dated 4.10.2011 passed by the trial Court below Exhibit 62 in Special Civil Suit No.14/2010.

4] The petitioner is the original plaintiff and who claims to be the member of Kalpataru Cooperative Housing Society, Nilanga. Special Civil Suit No.14/2010 has been filed for seeking cancellation of a saledeed and a

- 3 -

declaration that the saledeed is not binding on the plaintiff. The suit is also filed for seeking possession of the suit plot.

5] Shri Patil, learned Advocate for the petitioner, has submitted that application (Exh.62) was filed for seeking issuance of summons to the Chairman of Kalpataru Housing Society only for the purpose of ascertaining whether the name of the petitioner – plaintiff still appears as a member of the said society in its records. The petitioner had concluded his oral evidence. The trial Court has erroneously rejected the application on the ground that the petitioner was trying to delay the matter.

6] Shri Patil submits that being a plaintiff in the suit, it cannot be his intention to delay the proceedings. In order to ensure that his membership with Kalpataru Housing Society is established, he had sought issuance of summons so as to prove this aspect through the Chairman of the society.

7] He further submits that the trial Court should have appreciated that the membership of the petitioner – plaintiff was the crux of the matter with regard to the

- 4 -

suit plot and hence application (Exh.62) should have been allowed. He, therefore, prays that this petition be allowed and the impugned order rejecting application (Exh.62) be quashed and set aside. He further prays that the application (Exh.62) be allowed.

8] Shri Gastgar, learned Advocate appearing on behalf of respondent nos.3 to 6, submits that the defendants had admitted that the petitioner – plaintiff is the member of Kalpataru Housing Society. An admitted fact is not required to be proved. No evidence is required to be adduced when there is no dispute with regard to the membership of the petitioner – plaintiff.

9] He further submits that the trial Court has rightly appreciated the undisputed position and has, therefore, rejected the application (Exh.62). He prays for the dismissal of this petition with costs as the litigation has got dragged on account of the petitioner challenging the impugned order despite his interest having been secured.

10] I have considered the submissions of the learned Advocates.

11] There is no dispute that application (Exh.62)

- 5 -

was filed for seeking issuance of summons to the Chairman of Kalpataru Housing Society as a witness in Special Civil Suit No.14/2010. The said application indicates that the petitioner desired to prove his membership with the said society. The trial Court has recorded that the defendants admit that the petitioner is the member of the said housing society.

12] As such, in my view, when the issue of membership of the petitioner was admitted and hence undisputed, there was no requirement for summoning the Chairman of the society to depose in the suit as to whether the petitioner is a member of the society or not. I, therefore, do not find that the impugned order could be termed as being perverse or erroneous or is likely to cause grave injustice to the petitioner.

13] In the light of the above, this petition, being devoid of merit, is, therefore, dismissed. Rule is discharge. No costs.

(RAVINDRA V. GHUGE, J.)