

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

933 WRIT PETITION NO. 6602 OF 2014
WITH WP/4370/2004 WITH WP/1444/2015

BALKRISHNA DHONDIRAJ MAYUR
VERSUS
SHANKARLAL ASARAM GUPTA SINCE DIED THR. LRS.
SUDHIR SHANKARLAL GUPTA AND OTHERS

Shri. R.F. Totla, Advocate, for petitioner.

Shri. P.R. Katneshwarkar, Advocate, for respondent
Nos.1A and 1B.

CORAM: T.V. NALAWADE, J.

DATE : 2nd SEPTEMBER 2016

ORDER:

1) Writ Petition No.6602/2014 is filed to challenge the order made by the learned Ad-hoc District Judge Aurangabad on application filed by the present petitioner for permission to deposit the cost amount which was directed to be paid in Application bearing No.137/2006. The petitioner had lost in Regular Civil Suit No.51/1981 which was filed for declaration and injunction and he had filed appeal with application for condonation of delay. The

delay was condoned subject to payment of cost and that order was made on 16-11-2007. The cost amount was not deposited and the application on which order is made came to be filed on 10-2-2010, after about 2 and half years. It appears that the present writ petition came to be filed on 4th July 2014 to challenge the order made by the District Court on 18-2-2010.

2) In view of the aforesaid circumstances the learned counsel for the petitioner was asked to show that there is some arguable case in the appeal to the present petitioner. The submissions made show that the suit property was admittedly owned by Sundarlal Gupta. Plaintiff No.1 Shankarlal is brother of Sundarlal. It is the case of the petitioner that Sundarlal had given the suit property admeasuring 5 hectares 45 R for rendering service to Guru Paduka in the year 1956 by oral gift and on the basis of oral gift mutation was also made in favour of the said Guru Paduka.

3) There is no record to show that there was valid gift made by Sundarlal. All the relevant circumstances are

considered by the trial Court and the suit is decreed and relief of injunction is given. It appears that to see that the place where the Padukas are there is not disturbed, place having 5 gunthas is protected by the Civil Court. Thus, even when there was no entitlement, 5 R portion is given for Paduka.

4) Present applicant, Balkrishna is claiming that he works as Pujari at the place of Paduka and in that capacity he is entitled to hold and get the aforesaid property. Learned counsel for the petitioner submitted that one proceeding is started before the Assistant Charity Commissioner and one inquiry is pending in respect of the present suit property.

5) The aforesaid submissions made show that there is virtually no case at least to Balkrishna. In view of these circumstances this Court holds that nothing can be achieved by giving permission to the petitioner to deposit the cost amount for getting decision of appeal. It is nothing but protracting tactics. Discretion cannot be used in favour of such person and so the District Court has

refused the relief. In the result, Writ Petition No.6602/2014 stands dismissed. Other writ petitions are to be listed separately.

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

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