

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

WRIT PETITION NO. 1505 OF 2015

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DR. SUDHIR HANUMANTRAO DESHMUKH
VERSUS
PRADIP HANUMANTRAO DESHMUKH

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Advocate for Petitioner : Mr A.M Gholap h/f P P More
Advocate for Respondent : Mr P K Deshmukh

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CORAM : V.K. JADHAV, J.
Dated: February 26, 2016

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PER COURT :-

1. Heard finally with the consent of parties at admission stage.
2. The petitioner/original plaintiff instituted a Regular Civil Suit No.146 of 2006 for declaration as a Manager of the Datta Devsthan (Private) situated at Kalamb according to the conditions of 'Arpanpatra' and a decree of perpetual injunction against the defendant permanently restraining him from interfering the daily management of said Datta Devsthan, Kallamb.
3. The respondent/original defendant appeared in the said suit and filed his written statement and

strongly resisted the claim. The Trial Court has also framed the issues in the said Regular Civil Suit no.146 of 2006. Claim of the petitioner is based on the Arpanpatra dated 30.10.1954 which is in Urdu language and it was in the official custody of the Tahsil Office, Kalamb. The burden of proof to prove the said issues is on the petitioner/plaintiff and in order to discharge the said burden, the petitioner/plaintiff requested the Trial Court to summon the witness from the Tahsil Office, Kalamb to produce the original Arpanpatra on record, and, accordingly, original Arpanpatra is produced before the Court, and, the same is in the custody of the Trial Court. The petitioner/plaintiff had filed an application Exh.125 initially and applied for the custody of the original Arpanpatra for placing on record the translation of the said Arpanpatra, however, the Trial Court has rejected the said application Exh.125 on the ground that, the original document cannot be given in the custody of the parties. Consequently, the petitioner/plaintiff has filed an application Exh.127 requesting therein to the Court to send the original Arpanpatra to the Official translator within its

jurisdiction, however, the trial court has rejected the said application at Exh.127 by impugned order dated 5.10.2013. Hence, this writ petition.

4. Learned counsel for the petitioner submits that, the petitioner has requested the court for the translation through official translator, however, even then, the application Exh.127 came to be rejected. Learned counsel submits that, the burden is on the petitioner/plaintiff to prove the issues no.1 to 5 and his entire suit is based on the conditions laid down in the said original Arpanpatra. Learned counsel submits that, admittedly said 'Arpanpatra' is in Urdu language and translation is not placed on record, the burden as on the petitioner-plaintiff could not be discharged.

5. Learned counsel for respondent submits that, the petitioner/plaintiff admitted the translation of the original Arpanpatra in Marathi as correct in Regular Civil Suit No.471 of 2000 which came to be instituted by the respondent against some other persons wherein the present petitioner also added as a defendant

subsequently. Learned counsel submits that, there is only one Arpanpatra and since translation of said Arpanpatra in Marathi is admitted by the petitioner-plaintiff, though in another suit, there is no need of filing another translation in the present suit. Learned counsel submits that, the Trial Court has, therefore,, rightly rejected the application at Exh.127.

6. On careful perusal of the contents of the plaint of Regular Civil Suit No.146 of 2006, it appears that, the petitioner-plaintiff is knowing the conditions of said Arpanpatra well and, accordingly, the suit is instituted for declaration and perpetual injunction. It appears that, the conditions of the Arpanpatra are referred in various paragraphs of the plaint. It has specifically pleaded in paragraph No.3 of the plaint and accordingly, as per the conditions described in the Arpanpatra the eldest son of the family has been empowered as a Manager of the Datta Devsthan property. Copy of plaint of RCS No.471 of 2000 is placed on record. Said Regular Civil Suit No.471 of 2000 is instituted by the present respondent/defendant for declaration and a

decree of perpetual injunction against one Aminabee Mehmood Bagwan wherein the present petitioner is also impleaded as a defendant No.2. In the said suit, the present petitioner has filed his written statement and also referred again the conditions of the 'Arpanpatra' in the pleadings of his written statement. In the said Regular Civil Suit No.471 of 2000, the present petitioner has filed his affidavit of evidence and he was subjected to cross examination by the present respondent who is original plaintiff in that suit. In cross examination, present petitioner has admitted that, Marathi translation of the original Arpanpatra has been done in the said suit and the contents of the translated documents are true and correct and the conditions referred in the Arpanpatra are also correct.

7. In light of these facts, the petitioner-plaintiff in this case, if required, may call the Record and Proceedings of said Regular Civil Suit No.471 of 2000 for looking into Marathi translation of the 'Arpanpatra'. The Trial Court has, thus, rightly rejected the application at Exh.127 by observing the same.

8. I do not find any fault in the order passed by the Trial Court. Writ Petition is devoid of any merits. Hence, following order.

ORDER

- I. Writ Petition is hereby dismissed.
- II. In the circumstances, there shall be no order as to costs.

(V.K. JADHAV, J.)

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aaa/-