

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

15 WRIT PETITION NO. 1055 OF 2015

TUKARAM RATNA CHAMBAR (BHANDARE)
VERSUS
GUNWANT GANPATI ROKDE AND ANOTHER

Shri. Santosh B. Gastgar, Advocate, for petitioner.

CORAM: T.V. NALAWADE, J.

DATE : 22 AUGUST 2016

ORDER:

1) The petition is filed to challenge the order made on Exhibit 124 in Regular Civil Suit No.432/2011 by the Civil Judge, Junior Division, Latur. Heard learned counsel or the petitioner.

2) The suit is filed by the present respondents for relief of declaration of ownership and for possession of immovable property, agricultural land. It is the case of the plaintiffs that the agricultural land was given to the defendant, who is relative of the plaintiffs for cultivation as he was poor person and only to help him to earn livelihood the land was given in possession but the

ownership was not transferred. It is the case of the plaintiffs that revenue record was not to be changed but the defendant changed the record and cause of action took place.

3) It is the case of the defendant that the suit land is his ancestral land and he has denied that he is relative of the plaintiff.

4) The submissions made and the record show that the plaintiffs examined few witnesses and closed their evidence in year 2012. Similarly the defendant examined witnesses and closed his evidence on 13-10-2014. An application for calling witness, a lady aged 80 years, was moved by the plaintiff on 29-10-2014 immediately after closure of the evidence of the defence. It is the case of the plaintiffs that she is relative of both sides and she can give evidence on the relationship and other things. In view of this contention made in the application the trial Court has allowed the application though the particulars like contents of the application are not mentioned in the reasoning.

5) Learned counsel for the petitioner, original defendant submitted that the provision which was made to give opportunity to the parties to examine witness at any stage is now deleted and so the trial Court ought not to have allowed the plaintiffs to call witness for giving evidence after closing the evidence. This Court has no hesitation to hold that in the matter like present one, opportunity needs to be given for doing justice and in such case no prejudice will be caused as the other side has always opportunity to cross examine the witness. This Court holds that it will not be desirable to use extraordinary jurisdiction to interfere in the order made by the trial Court. The petition stands dismissed. Interim relief is vacated. No further continuation of interim relief is granted. The amount if any deposited in the trial Court for getting interim relief is to be returned to the present petitioner.

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

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