

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

922 WRIT PETITION NO. 12425 OF 2016

ASHWINIBAI BHARAT THENGADE
VERSUS
IQBALSING MAHENDRASINGH DHILLON

...
Advocate for Petitioner : Kshirsagar Satish M
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CORAM : T.V. NALAWADE, J.
DATED : 20th December, 2016.

ORDER :

1. The petition is filed to challenge the order made on Exh. 36 in R.C.S. No. 97/2012, presently pending in the Court of Civil Judge, Junior Division, Khultabad, District Aurangabad. Heard the learned counsel for petitioner.

2. The suit is filed by respondent Iqbalsing Mahendrasingh Dhillon for relief of declaration that he is the owner of suit property viz. Gat No. 75 situated at Khultabad. He is also claiming that he is in possession of the suit property. The suit is filed for relief of ownership as one sale deed is executed in respect of this land in favour of defendant, present petitioner. In view of the contentions made by plaintiff, following issues are framed :-

(1) Whether plaintiff proves that he is owner and

possessor of suit property ?

(2) Whether plaintiff proves that the sale deed dated 13.1.2010 and General Power of Attorney dated 7.1.2010 are not binding on him ?

(3) Whether defendant proves that the General Power of attorney dated 7.1.2010 and sale deed dated 13.1.2010 are genuine and executable for valuable consideration ?

3. In view of nature of relief claimed, it can be said that the third issue was also unwarranted. It is the defence of the present petitioner in the suit that one Iqbalsing Mahendrasingh Dhillon, who is vendor of present petitioner is owner of the property. The learned counsel for petitioner showed to this Court copy of power of attorney showing the photographs of the person to whom power of attorney is given and he submitted that this man Iqbalsing Mahendrasingh Dhillon shown in the power of attorney, vendor of petitioner is different than the present respondent plaintiff. Copy of Permanent Account Number (PAN) issued to plaintiff by Income Tax Office is produced and on the card, there is photograph of plaintiff. It is the contention of the present petitioner that plaintiff is different person and he is not owner of the suit property though there may be similarity in

the names of present plaintiff and the vendor of the defendant.

4. When the suit of aforesaid nature is filed, the burden is always on the plaintiff to prove that he is owner of the property. Issue No. 1 includes everything and it will be necessary for plaintiff to prove that Iqbalsing Mahendrasingh Dhillon is the owner of the suit property and he is the said owner. In view of this circumstance, this Court holds that it is not necessary to frame additional issue like "Whether plaintiff proves that he is Iqbalsing Mahendrasingh Dhillon?" Thus, the application itself was misconceived. There is no need to interfere in the order made by the Trial Court. The petition stands dismissed.

[T.V. NALAWADE, J.]

SSC/