

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1317 OF 2015

Mr. Vijay Narbatroa Lokre & Ors ... Petitioners

Vs

Mrs. Badamibai Sagarmal Kering & Ors. ... Respondents

...

Mr. Kunal Mehta i/b. Mr. Sanjay Gawde for the Petitioners.

CORAM : K. K. TATED, J.

DATE : 7 APRIL, 2016

P.C. :

1 Heard the learned counsel for petitioner.

2 By this petition under Article 227 of the Constitution of India, Petitioner- original defendant challenges the order dated 5th September 2014 passed by the Additional Judge Small Causes Court, Pune, below Exh. 63 in Civil Suit No. 621 of 2007 rejecting defendant's application under Order XVIII Rule 18 of Civil Procedure Code for inspection of plaintiff's properties which he is holding and having in his possession.

3 The Trial Court in para 4 of the impugned judgment recorded that earlier the defendant filed application under Order 26 Rule 9 of the Civil Procedure Code being Exh. 41 for appointment of Court Commissioner for inspecting the premises in the possession of the plaintiff and for taking their measurement and drawing the map.

That application was rejected by the trial court by order dated 22nd August 2013. In that order the trial court in para 5 recorded that the defendant wants to collect the evidence through the Commissioner against the plaintiff. The Trial Court also observed in para 5 of the said order that if really the plaintiffs are having other premises, then that fact can be brought on record by the defendant in the cross-examination of the plaintiff and his witnesses and also by filing the documents to that effect on record.

4. The learned counsel for defendant submits that the court below failed to consider the fact that as per order XVIII Rule 18 of Civil Procedure Code, the court on its own can inspect the suit premises. He submitted that in the present proceeding the plaintiff suppressed the material fact at the time of filing the plaint. The plaintiff failed to disclose his properties in his possession. He submits that the defendant learnt that other properties are in possession of plaintiff. He submits that if these facts are brought on record, then nothing will survive in the suit filed by the plaintiff, for vacant and peaceful possession of the suit property on the ground of *bona fide* requirement. Hence the impugned order passed by the trial court on 5th September, 2014, below Exh. 63 be set aside allowing

the defendant's application below Exh. 63 under order XVIII rule 18 of Civil Procedure Code. He submits that if the writ petition is not allowed, irreparable loss and injury will be caused to the defendant. He submits that the defendant has good chance of succeeding in the suit filed by the plaintiff on the ground of *bona fide* requirement.

4. I have heard the learned counsel for defendant at length. It is to be noted that earlier the defendant filed application below Exh. 41 under Order 26 Rule 9 for appointment of Court Commissioner to inspect the premises in the possession of the plaintiff. That application was rejected by the trial court by order dated 22nd August 2013 holding that the burden is on defendant to prove his case on his own. It is to be noted that if the defendant have any knowledge about the suit properties standing in the name of plaintiff and in his possession, then the burden is on defendant to prove those facts. Considering this position, I do not find any reason to interfere in a well reasoned order dated 5th September 2014 passed by the learned Additional Judge Small Causes Court, Pune below Exh. 63 in Civil Suit no. 621 of 2007.

5. Hence Writ Petition stand rejected.

(K. K. TATED, J.)