

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

925 WRIT PETITION NO. 4442 OF 2017

MAHADEV EKNATHRAO MULE
VERSUS
VITTHAL VENKATI MULE

...

Advocate for Petitioner : Kale Mahesh P.
Advocate for Respondents : Mundhe Subhash V. For R-sole

...

CORAM : P.R. BORA, J.
DATE : 04-04-2017.

P.C. :

1. Heard Shri Kale, the learned counsel appearing for the petitioner and Shri Munde, the learned counsel appearing for the respondents. Perused the impugned order.

2. The petitioner had filed an application at exhibit-48 in the execution proceedings no. 66 of 2001 before the trial Court with a prayer that the matter be forwarded to the Tahsildar for deciding the issue of tenancy. It was the contention of the petitioner that his father was the tenant in the subject property and, as such, unless the issue of tenancy is decided the Civil Court cannot proceed with the matter further. The learned trial Court has, however, by recording elaborate reasons and discussing the case law on the issue has rejected the said application vide the impugned order. After having carefully perused the impugned order, it does not appear to me that, the trial Court has committed any error in rejecting the application so filed by the petitioner.

3. The learned trial Court has observed that, the petitioner has failed in making out any prima facie case for allowing his application. It is further observed that, such an objection could have been raised by the petitioner much earlier, however, the same was not taken by the petitioner and it is further observed that, the contentions of the petitioner in the application submitted by him at exhibit-40, and at exhibit-48 are contradictory. It is further observed by the trial Court that the written submissions filed by the petitioner at exhibit-99 are also contrary to the stand taken by him in the application at exhibit-40 and the application at exhibit-48.

4. In the above circumstances, the trial Court has rightly rejected the application. I see no reason to cause any interference in the impugned order. The petition being devoid of any substance deserves to be dismissed and is accordingly dismissed.

5. The learned counsel appearing for the petitioner submitted that, the petitioner has also filed certain other applications which are still pending before the executing Court. It is clarified that the observations made in the present order shall not affect the merit of and the contentions raised in the said pending applications and the learned executing Court shall decide the said applications on their own merits.