

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4168 of 2014

Sayas S/o Narayanrao Mundhe
Age: 56 years, Occu. Agril.,
R/o. Kingaon, Tq. Ahmedpur,
Dist. Latur.

.. Petitioner

Versus

1. Nathrao S/o Wamanrao Mundhe
Age: 72 years, Occu. Agril.
2. Gangadharrao S/o Narharrao Mundhe
Age: 52 years, Occu. Agril.
3. Uttamrao S/o Panditrao Mundhe
Age: 50 years, Occu. Agril.
4. Kishanrao S/o Panditrao Mundhe
Age: 48 years, Occu. Agril.
5. Balaji S/o Sheshrao Mundhe
Age: 51 years, Occu. Agril.
6. Prakash S/o Rajaram Mundhe
Age: 47years, Occu. Agril.
7. Vijaykumar S/o Shivajirao Mundhe
Age: 50 years, Occu. Agril.
8. Vasudeorao S/o Vinayakrao Mundhe
Age: 52 years, Occu. Agril.
9. Vasantrao S/o Vinayakrao Mundhe
Age: 51 years, Occu. Agril.
10. Diliprao S/o Gangaramji Mundhe
Age: 48 years, Occu. Agril.
11. Kishor S/o Gangaramji Mundhe
Age: 45 years, Occu. Agril.
12. Dinkarrao S/o Sampatrao Mundhe
Age: 55 years, Occu. Agril.

13. Vinod S/o Govindrao Mundhe
Age: 43 years, Occu. Agril.
14. Prabhakar S/o Gangaramji Mundhe
Age: 47 years, Occu. Agril. .. Respondents
- All R/o. Kingaon, Tq. Ahmedpur
Dist: Latur.

Mr. Ameya N. Sabnis, Advocate h/f Mr. V.D. Gunale, Advocate for petitioner
Mr. N. D. Kendre, Advocate for respondents

CORAM : SUNIL P. DESHMUKH, J.

DATE : 15th December, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for parties finally by consent.
2. Petition has been moved by original plaintiff against order dated 23-04-2014 passed on Exhibit - 144 in regular civil suit no. 139 of 2007, whereunder 2nd Joint Civil Judge, Junior Division, Ahmedpur has rejected the request of the petitioner - plaintiff for leave to produce documents. The suit by petitioner is for declaration of ownership and injunction.
3. After hearing learned counsel for the parties, it appears to be case of the petitioner - plaintiff that while evidence in the form of affidavit of respondent no.1 - original defendant no.1 at Exhibit 138 had been filed, several questions had been raised in

the same and that has necessitated production of certain documents which would be public in nature and while instituting suit, it had not been perceived to be of significance for decision in controversy in the suit. It having been realized upon affidavit in evidence filed by Nathrao Wamanrao Mundhe at Exhibit 138, application Exhibit - 144 had been filed.

4. Mr. Ameya Sabnis, learned counsel appearing on behalf of the petitioner in support of his submissions, refers to and relies on a decision of this court in the case of *Mohanraj Rupchand Jain alias Chhajed vs. Kewalchand Hastimal Jain*, reported in 2007 (1) *Mh.L.J.* 691 which, according to him, encompasses present controversy and would let production of documents at this stage.

5. He purports to submit, even otherwise, impugned order is cursory without getting into nature of controversy involved and the impact of absence of production of documents on decision in the matter. The court, according to him, had been swayed by stage at which application is moved, rather than the purpose under the application and its efficacy.

6. He submits, application Exhibit - 144 may not strictly conform to requirements pursuant to Order VII, rule 14 of the Code of Civil Procedure, however, looking at that the plaintiff is

primarily agriculturist by occupation, his literacy level being limited and proper timely advice not coming his way, requisite particulars may not have been reflected in the application.

7. Countering aforesaid, Mr. Kendre, learned counsel appearing on behalf of respondents contends that a belated approach is not only undesirable but has, in fact, been frowned upon and is required to be dealt with by firm hands.

8. He, for aforesaid proposition, purports to refer to and rely on decision of the supreme court in the case of *M/s Bagai Construction vs. M/s Gupta Building Material Store*, reported in *AIR 2013 SC 1849*, and particularly lays emphasis on observation in paragraph number 12 thereof which, according to him, speaks that the stages are important to be observed for expeditious disposal of the *lis* and on this premise, according to him, application Exhibit-144 moved by present petitioner is not only defective but is vacuous and thus having regard to observations in aforesaid decision of supreme court, application was not liable to be considered and has been rightly rejected by trial court.

9. Although learned counsel Mr. Kendre has referred to and relied on aforesaid decision of the supreme court, the observations in said case appear to have been made on the

background, particularly regard been had to that, the dispute involved was a commercial litigation, wherein it appears that the parties were well equipped and in the circumstances the reasons and grounds as were considered had not impressed the court and observations were made. The case on hands is coming from mofussil area and as such, it is desirable that appropriate approach is taken in the matter allowing the application without entering into technicalities. As such, although Mr. Kendre submits that analogy be drawn from the principles and not facts, yet it is to be considered that dispute is among family members and not commercial nor literacy level of people from mofussil area can be equated with awareness, alertness of persons in the commercial matter. It may be considered that a little lenient approach would be expedient in present matter which may end up in effectual disposal of *lis* by adjudication of the rights in properly.

10. Thus, this appears to be a case wherein it would be expedient to allow the application Exhibit -144 which would be expedient for decision of the *lis* on merits of the case effectively, however, at the same time, inconvenience caused to the other side in the process would have to be mended by awarding suitable costs.

11. Writ petition accordingly is allowed.

12. Impugned order dated 23-04-2014 passed on Exhibit - 144 in regular civil suit no. 139 of 2007, by the 2nd Joint Civil Judge, Junior Division, Ahmedpur is set aside. Exhibit - 144 is allowed subject to payment of costs of Rs.14,000/-. Petitioner to deposit costs in trial court within a period of two months from the date of receipt of writ of this court by the trial court. Costs would be a pre-condition and in case of failure to deposit costs, cessation of interim relief operating under the orders of the trial court would be considered in earnest. Respondents- defendants will have an opportunity to cross examine the plaintiff and his witnesses again on production of documents. Suit may be proceeded with expeditiously and disposed of preferably within a period of nine months from the date of receipt of writ of this order by trial court.

13. Writ petition is disposed of. Rule made absolute in aforesaid terms.

SUNIL P. DESHMUKH
JUDGE

pnd/-