

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7926 OF 2015
(Hamid Jabbar Attar Vs. Vithal Narayan Mule and others)
WITH
CIVIL APPLICATION NO.1453 OF 2016

Mr.Shrikant Patil, Advocate for the petitioner.
Mr.Dhananjay Deshpande, Advocate for respondent Nos. 1 and 2.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 10/08/2017

PER COURT :

1. Learned advocate for the petitioner submits that this civil application is rendered infructuous as RCS No.148/2012 (Old No.104/2001) has already been abated as against the deceased defendant No.4. By recording the said statement, the civil application is disposed of as being infructuous.

2. Consequently, the petitioner seeks leave to delete respondent No.5 deceased original defendant No.4 from this writ petition. Leave granted. Deletion to be carried out forthwith.

3. The petitioner is aggrieved by the order dated 08/07/2015 by which application Exh.179 has been rejected and defendant No.3 has not been permitted to lead oral evidence as the power of attorney

holder Ejaj had led evidence on behalf of defendant No.3. Ejaj is already defendant No.1-D in the suit.

4. The grievance is that though the G.P.A. was given to Ejaj by defendant No.3 and it was not specifically mentioned that he would not lead evidence on behalf of defendant No.3, Ejaj had led evidence only to the extent of his knowledge. In so far as the sale deed at issue is concerned, Ejaj was a minor when it was executed and has no knowledge about the said sale deed. Evidence to that extent can only be adduced by the petitioner/defendant No.3 as the testimony would be based on his personal knowledge about the facts of the case.

5. It is further submitted that after Ejaj led evidence, he has closed the further evidence by filing a *purshis* on 26/09/2014. Immediately after getting to know that evidence has been closed, the petitioner moved an application Exhibit 179 on 04/03/2015. Same has been rejected on the ground that sufficient grounds have not been cited for permitting him to lead evidence.

6. The medical reports and papers pertaining to the illness of the petitioner are now shown to the Court indicating that the petitioner

was suffering from impairment of the spinal chord. He has now recovered to some extent and can personally appear before the Court and lead evidence without seeking adjournment.

7. Mr.Deshpande, learned Advocate appearing on behalf of respondent Nos. 1 and 2, who are the original plaintiffs, submits that the petitioner should have been diligent and alert. Once the G.P.A. was executed in favour of Ejaj and after Ejaj has led evidence, the said defendants have closed their evidence. Final arguments also have been advanced by the plaintiff and at that juncture Exh.179 was filed.

8. After considering the rival submissions, I find that in matters pertaining to immovable properties, if any lacuna is left in the proceeding, the litigating sides are likely to suffer an irreparable loss. The plaintiffs have sought possession of the suit land and have also sought future *mesne* profit. In this backdrop, if the G.P.A. holder Ejaj has led evidence to the extent of his knowledge and if he was a minor at the time of the registration of the sale deed dated 14/06/1990, he may not be able to depose to that extent. The petitioner claims to have personal knowledge about the sale deed at issue. He might lose the immovable property if evidence is not

permitted.

9. In the peculiar facts as recorded above, it is obvious that the personal knowledge of the petitioner with regard to any sale transaction or the rights involved in the suit land, will entitle the petitioner to lead evidence. If this opportunity is taken away, he might suffer loss of immovable property.

10. Considering the above and the medical papers shown by the petitioner, I find that the petitioner deserves to be granted an opportunity to lead oral evidence in order to ensure that the ends of justice are met. The hardships caused to the plaintiffs can be compensated by imposing costs.

11. In the light of the above, this petition is allowed. The impugned order dated 08/07/2015 is quashed and set aside. Application Exh.179 is allowed under the following directions :-

[a] As per the contention of the petitioner, he shall appear before the Trial Court on 01/09/2017 for recording his examination-in-chief.

[b] If he chooses to file an affidavit in lieu of his evidence and if a copy of the same is delivered to the plaintiff at least 7 days in advance, the plaintiffs would cross examine him on

01/09/2017.

[c] In the event the affidavit in lieu of examination-in-chief is tendered at the eleventh hour to the plaintiffs, they would be at liberty to seek an adjournment for cross-examination and for which purpose the petitioner shall remain present so as to facilitate the cross-examination.

[d] The petitioner shall deposit an amount of Rs.5,000/- before the Trial Court on or before 01/09/2017 and the said amount shall be withdrawn by the plaintiffs in equal proportions, without any conditions.

[e] It is made clear that this petition is entertained only to allow the petitioner to lead evidence.

[f] Since the suit has been instituted in 2001, the Trial Court would be justified in refusing adjournments if sought on unreasonable grounds and shall endeavour to decide the suit as expeditiously as possible and preferably on or before 31/03/2018.

(Ravindra V.Ghuge, J.)