

IN THE HIGH COURT OF JUDICATUR OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9895 OF 2017

ASHABAI SANJAY MORE
VERSUS
LAXMAN DHANJI USHIRE AND OTHERS

Advocate for Petitioner : Shri A.R. Syed
h/f Shri S.P. Brahme.
AGP for Respondent No. 3 : Shri S.N. Kendre.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 20th September, 2017

PER COURT :

1. The petitioner / original defendant No. 1 is aggrieved by the order dated 28/06/2017, passed by the Trial Court, thereby, allowing application Exhibit 57 and issuing summons to the Gram Sewak for recording his oral evidence.

2. The operative part of the impugned order is as under :

“2. Issue witness summons to the Gramsevak, Avdhan Grampanchayat, Avdhan, Tal & District Dhule to remain present for evidence along with record of property No. 703 and 912 situated within the limits of Avdhan Grampanchayat as well as record related to certificate below Exh. 41 and 43 respectively, property extract of

property No. 353 below Exh. 42, assessment list for the year 2002-2003 below Exh. 44 and assessment list for the year 2007-2008 below Exh. 45.

3. The plaintiff is directed to supply copy of the documents below Exhs. 41 to 45 within one week from today. Upon Compliance of the same those be annexed along with the witness summons. The plaintiff also do pay Bhatta as per rules within one week from today. Upon compliance summons be issued accordingly.”

3. Shri Brahme, learned advocate for the petitioner has strenuously criticized the impugned order. He submits that primarily Exhibit 56 has to be rejected, because the plaintiff had failed to tender a list of witnesses under Order XVI Rule 1 of the C.P.C. and having failed in submitting such a list, the application for issuance of summons could not be entertained.

4. He, further, submits that the plaintiff initially stepped into the witness box. Thereafter, he was cross-examined and the petitioner was successful in extracting certain admissions from him. After, the examination was over on 07/03/2016, the

plaintiff submitted a purshis closing the recording of his oral evidence. The stage was for the defendant to lead evidence.

5. At that juncture, the plaintiff had filed an application Exhibit 57 making a request for issuance of summons. By the order dated 19/10/2016, the said application was rejected by the Trial Court as sufficient cause was not shown by the plaintiff for issuance of summons. The plaintiff carried the said order in Writ Petition No. 3440/2017. By order dated 15/03/2017, this Court has dismissed the petition, but granted liberty to the plaintiff to file a fresh application under Order XVI, since the earlier application was rejected due to lack of proper pleadings. In this backdrop, the plaintiff had filed application Exhibit 57.

6. Having considered the strenuous submissions of the learned counsel for the petitioner and with his assistance I have gone through the petition paper book and the impugned order.

7. It is obvious that this Court, by its order dated

15/03/2017, had noted that Exhibit 57 filed by the plaintiff did not contain proper pleadings with reference to Order XVI Rule 1 of the C.P.C. Hence, the liberty to file a fresh application was given. While granting the said liberty, this Court has observed in paragraph No. 1 as under :

“1. Heard learned Counsel for the petitioner. Perused the impugned order. The reason stated in the impugned order that the petitioner’s application does not comply with the requirement of Order 16 Rule (1), does not appear to be against the well settled principles of law. But, one has to keep it in mind that the whole system of administration of justice exists for doing substantive justice requires that some liberty should be given to the party for complying with the procedural requirement, same should be afforded to the party.”

8. It is trite law that in the proceedings of such a nature, the endeavour of the Court is to ensure that there is no miscarriage of justice and to avoid multiplicity of litigation, an appropriate order can be passed to balance the equities. In Exhibit 57, the plaintiff has set out reasons for seeking the liberty to examine the Gram Sewak. Such liberty would not have been necessary if

the Gram Sewak, who was defendant No. 2 in the suit, after being added as such on the request of the plaintiff, had responded to the notice of the Court. He did not file a written statement and remained absent. He could have rendered assistance to the Trial Court by his written statement and could also have led his evidence. Since, he failed to do so, the plaintiff realized that issuance of summons would bring him to the Court.

9. There are certain documents placed on record before the Trial Court, which are certified copies. The said documents are branded to be false by the petitioner. Suggestions with regard to the said documents were also posed and a doubt was sought to be created on these documents. In this backdrop, the Trial Court has permitted the plaintiff to examine the Gram Sewak.

10. I do not find that the impugned order would cause grave injustice to the petitioner and could be termed as being perverse or erroneous. The petitioner is not remediless as he can cross-examine the Gram Sewak.

11. In that view of the matter, this petition being devoid of merits, is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

S.P.C.