

IN THE HIGH COURT OF JUDICATUR OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9979 OF 2017

PRASHANT SABAJI WARE AND OTHERS
VERSUS
SHARAD DARKUJI KALE

Advocate for Petitioners : Shri D.K. Dagadkhair
h/f Shri P.K. Palve.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 21st September, 2017

PER COURT :

1. The petitioners are aggrieved by the order dated 22/06/2017, by which the application filed by the petitioners, seeking the medical examination of plaintiff No. 3 and for declaring him to be mentally challenged, has been rejected.

2. I have considered the submissions of the learned advocate for the petitioners. I find that the application Exhibit 87, as well as, in the entire memo of the petition, the petitioners have not stated under which provision of the Code of Civil Procedure, the Trial Court can direct the medical examination of a person, with regard to his mental ability and issue a certificate that he is of

an unstable mind. Even, when the learned advocate was called upon to point out any provision, it is canvassed, initially, that such an order can be issued under Section 151 of the C.P.C. Thereafter, it is canvassed that an order under Order VI Rule 6 of the C.P.C. can also be passed.

3. I do not find that Section 151 would have its applicability in such a situation, since an order practically seeking a medical certificate that a litigant is insane is not to be passed casually or lightly. So also, Order VI Rule 6 pertains to summoning a person to produce a document without being summoned to give evidence.

4. It becomes obvious that the petitioner/plaintiff have filed Exhibit 87, as they are contending that plaintiff No. 3 was not in a position to sign or execute any document or venture into any transaction. It is for this purpose that plaintiff Nos. 1 and 2 intend to acquire such a certificate with regard to the state of mental health of plaintiff No. 3.

4. I find from the impugned order that witness No. 2 on behalf of the plaintiff has stated that plaintiff No. 3 was suffering from Epileptic fits and Veneral disease. In that backdrop, the Trial Court has rejected Exhibit 87 and held that no order, to find out the length of illness of a person, could be passed under such circumstances.

5. I do not find that the impugned order could be termed as being perverse or erroneous. This petition being devoid of merits, is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

S.P.C.