

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10725 OF 2016

DATTA DEVIDAS GUNJAL
VERSUS
RAMRAO BAPURAO PAUL AND OTHERS

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Advocate for Petitioner : Shri Choudhari Sushant B.
Advocate for Respondents 1 to 4 : Shri Tekale Nikhil S.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 04, 2017
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PER COURT :-

1. This matter is heard finally at admission stage by the consent of the parties.

2. The petitioner / defendant No.2 is aggrieved by the order dated 24.8.2016, by which, his right to cross-examine the Taluka Inspector of Land Records (TILR) who is the 5th witness of the plaintiff, has been forfeited.

3. I have considered the submissions of the learned Advocates for the respective sides.

4. This Court, by order dated 23.11.2016 had directed the petitioner to deposit Rs.25,000/- in this Court. Same is

deposited on 30.11.2016.

5. It is conceded by the parties that the 5th witness of the plaintiff Sunil Sudamrao Pawar is a TILR and at present is posted at Taluka Vaijapur. He was examined by the plaintiff. Despite opportunities, defendant Nos.1A to 4A did not cross-examine him and a 'No Cross' order was passed. By order dated 10.12.2015, below application Exhibit 134, the 'No Cross' order was vacated and summons were reissued to the TILR. The Bailiff report dated 14.3.2016 indicated that the TILR was served, but he did not remain present. The petitioner did not take steps for issuance of fresh summons. The trial Court once again gave an opportunity to the petitioner by order dated 27.6.2016. Yet the petitioner did not take steps and moved application Exhibit 146 for issuance of warrant. By order dated 11.7.2016, Exhibit 146 was rejected. By further order was passed on 24.8.2016, the right of the defendant to cross-examine the TILR has been forfeited.

6. It is apparent that the petitioner / defendant has acted casually in this matter and despite opportunities, has not cross-examined the TILR. However, I am of the view that when the TILR was served with the Court summons again and which is

evidenced by the report of the Bailiff dated 14.3.2016, the defendant had rightly moved Exhibit 146 seeking issuance of a warrant. The said application should not have been rejected by the trial Court as that was the only option available for the defendant to secure the presence of the TILR, who had already deposed by his examination-in-chief.

7. Considering the above, this petition is allowed. The impugned order dated 11.7.2016 rejecting Exhibit 46 and the order dated 24.8.2016 is quashed and set aside. Exhibit 146 stands allowed. The trial Court shall issue a warrant to Sunil Sudamrao Pawar, TILR, presently at Vaijapur for securing his presence, upon payment of Bhatta and process fees by the petitioner. On the date on which the TILR would appear for cross-examination as per the order of the trial Court, the petitioner and other defendants, if any, would cross-examine the TILR and would not seek an adjournment.

8. In so far as the costs deposited are concerned, I am inclined to grant Rs.20,000/- to the four plaintiffs. Learned counsel for the plaintiffs graciously donates Rs.5,000/- to the Advocate Associations' Bar Library of Bombay High Court, Bench at Aurangabad. Accordingly, the respondents are permitted to

withdraw Rs.15,000/- from this Court. Rs.5,000/- shall be transmitted by the Registry to the Advocate Associations' Bar Library of Bombay High Court, Bench at Aurangabad. The remaining amount of Rs.5,000/- along with accrued interest, shall be withdrawn by the petitioner / defendant No.2.

(RAVINDRA V. GHUGE, J.)

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