

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

39 WRIT PETITION NO. 14533 OF 2017

SYED HAMID SYED SHUJAUDDIN AND OTHERS
VERSUS
SUPDA THAMAJI BHIKA AND OTHERS

...
Advocate for Petitioners : Mr. Shaikh Rameez Raja Sk. Maqsood.
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CORAM : **V. K. JADHAV, J.**
DATE : 18th December, 2017.

ORDER:

. I find no substance in this writ petition. The Petitioners / original Plaintiffs approached to this Court by filing the present writ petition against the order passed below Exhibits 26 and 29 by the Trial Court in Regular Civil Suit No.536 of 2014. The application Exhibit 26 came to be filed under Order XI Rule 16 of the Code of Civil Procedure for production of document for inspection and the application Exhibit 29 is for re-casting the issues. The Trial Court while rejecting the application Exhibit 26 has observed that the Plaintiffs on earlier occasions filed the applications Exhibits 23 and 25 respectively for the same relief and the Trial Court has rejected the said applications by order dated 6th April, 2017 and 3rd August, 2017. However, the Petitioners / Plaintiffs have not challenged the said orders and lastly

filed the application Exhibit 26 with the same prayer. The learned Judge of the Trial Court has again dealt with the application Exhibit 26 and observed that if the said document is not found in the revenue record then the Petitioners may take appropriate steps to procure the said document and produce and prove it during the course of trial. The Trial Court has further given reference to the order passed by this Court in Writ Petition No.8898 of 2016 directing the Trial Court to decide the suit expeditiously. Applications Exhibits 23 and 25 with same prayer came to be rejected by the Trial Court against which the Petitioners / Plaintiffs have not approached to this Court. It thus, appears that the Petitioners / Plaintiffs are repeatedly filing such applications though on earlier applications, the Trial Court has passed the detailed order rejecting thereby the said applications seeking directions to the other side for production of document.

2 So far as the order below Exhibit 29 is concerned, the Petitioners / Plaintiffs have filed the said application for re-casting the issues against Defendant Nos.1 to 4. The Petitioners / Plaintiffs have paid in the application Exhibit 29 for re-casting the issues in the following manner:

- (i) Defendant Nos.1 to 4 prove their names entered in R.O.R. in respect of the suit properties on legally and sound ground.
- (ii) Defendant Nos.1 to 4 prove that their father was and they are legally owner and possessor of the suit properties.

3 On careful perusal of the written statement filed by original Defendant Nos.1 to 4, it appears that in paragraph 9 of the written statement, the Defendants have raised a specific pleading that the father of the Defendants became owner and after him the Defendants are enjoying the status as owner. The Defendants are in possession of the suit property since 1957 and thus, adversely became possessor and owner of the suit property. The Defendants have given reference to Mutation Entry No.153 certified by the Revenue Authority in respect of the suit property and thus, claiming their title adverse to the title of the Petitioners / Plaintiffs. On perusal of the issues, it appears that the Trial Court has specifically framed issue No.5 casting the burden on the Defendants to prove that they have become owner of suit property by way of adverse possession. In view of the same, I do not find any reason for re-casting the issues. The Trial Court has rightly rejected the application Exhibit 29. There is no justifiable reason for the

Petitioners / Plaintiffs to file application 26 when the applications Exhibits 23 and 25 seeking same relief came to be rejected by the Trial Court. There is no substance in the writ petition. The writ petition is hereby dismissed. No costs.

[V. K. JADHAV, J.]

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