

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1382 OF 2018

HARISHCHANDRA @ HARICHAND SATWA GAIKWAD
VERSUS
HASINABEGUM ANWARKHA PATHAN AND OTHERS

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Advocate for Petitioner : Shri Solanke Shrikrashna B.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 22, 2018

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PER COURT :-

1. The petitioner is aggrieved by the order dated 17.11.2017, passed by the trial Court rejecting Exhibit 5 in RCS No.295 of 2017 and the judgment of the appellate Court dated 23.11.2017, rejecting Misc. Civil Appeal No.50 of 2017 filed by the petitioner.

2. I have considered the strenuous submissions of the learned Advocate for the petitioner / plaintiff and have gone through the petition paper book as well as the compilation of 44 pages of documents that have been tendered across the Bar.

3. It is obvious that the petitioner has indicated the suit property to be municipal property No.8 / 1526, which is situated

in S.No. 609, Miyabhai Colony in Ambajogai Municipal Council. Both the learned Courts below have refused temporary injunction to the petitioner on the ground that S. No.609 is not in existence and cannot be identified. The plaintiff has described the suit property in the plaint.

4. So also, my attention is drawn to an earlier Special Civil Suit No.1 of 1998 decided on 10.12.2004, pertaining to land S.No. 608, which was shown to be adjacent to land S. No.609, which is situated on the West Side of S. No.608. He, therefore, contends that this description of S.No. 608 and the rough sketch placed on record in the plaint clearly indicates that S. No.609 exists on the West side of S.No. 608.

5. In my view, the above disputed issues could be dealt with by the trial Court only after the recording of oral and documentary evidence since S. No.609 is to be identified so as to entitle the plaintiff to seek relief with regard to the said property.

6. Considering the above, this petition is disposed off.

7. I find it appropriate to observe that the prima facie observations of the trial Court as well as the appellate Court that

land S. No.609 is not in existence, shall be restricted to application Exhibit 5 and the trial Court shall decide RCS No. 295 of 2017 on its own merits by taking into account the totality of the oral and documentary evidence and shall not be influenced by the observations set out in the orders dated 17.11.2017 and 23.11.2017.

(RAVINDRA V. GHUGE, J.)

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akl/d