

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

921 WRIT PETITION NO. 13499 OF 2017

SHRIPATI PATLOBA KARAD THROUGH HIS POWER OF
ATTORNEY HOLDER VINAYAK SHRIPATI KARAD
VERSUS
THE GRAMPANCHAYAT OFFICE THROUGH ITS SARPANCH
AND ANOTHER

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Advocate for Petitioner : Mr. Manale Satish S.
Advocate for Respondent Nos. 1 and 2 : Mr. Jogdand h/f
Mr. Salunke V. D.

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CORAM : V. K. JADHAV, J.
DATED : 28th FEBRUARY, 2018

PER COURT:-

1. Heard finally with consent at admission stage.
2. The petitioner/original plaintiff instituted the Suit bearing Regular Civil Suit No. 399 of 2014 for a decree of simpliciter perpetual injunction and in the pending Suit, filed an application Exhibit 50 for appointment of Court Commissioner. The trial Court rejected the said application by the impugned order dated 04.02.2017. Hence this Writ Petition.

3. The learned counsel for the petitioner/original plaintiff submits that the plaintiff is claiming to be the owner in possession of the house property situated within the limits of the Village Gram Panchayat, Rameshwar, Taluka and District Latur, which is triangular in shape and measurement as detailed in para 2 of the plaint alongwith boundaries. The learned counsel submits that though the respondents/original defendants have admitted the measurement and the boundaries as detailed in para 2 of the plaint, raised a dispute to the extent that the petitioner/plaintiff own and possesse the Gram Panchayat (GP) house No.374 and he has no concern whatsoever regarding the GP house no. 413. The respondent–Gram Panchayat also disputed the construction of toilets. It is the case of the Gram Panchayat that the toilets are constructed by the Gram Panchayat in GP house no. 413 and the petitioner/original plaintiff is claiming the said toilets as belonging to his family and thus instituted the Suit. The learned counsel submits that in view of the said controversy, the petitioner/plaintiff has filed application Exhibit 50 seeking appointment of Court Commissioner, however, the trial Court has rejected the same.

4. The learned counsel for the respondents/original defendants submits that the petitioner/plaintiff has instituted the Suit simpliciter for a decree of perpetual injunction. There is no boundary dispute in any manner and on the other hand, the respondent/Gram Panchayat has admitted the measurement and the boundaries. According to the respondents/defendants, the petitioner/plaintiff is intending to grab the toilets constructed by the Gram Panchayat on its own property bearing GP house no. 413 and thus, instituted a false Suit. In the given set of facts and circumstances of the case, the trial Court has rightly rejected the application. No interference is required.

5. It appears that the petitioner/plaintiff has instituted the Suit, simpliciter for a decree of perpetual injunction. There is no boundary dispute. There is a dispute about the wrong mentioning of the house number. It is the case of the respondents/original defendants that the petitioner/plaintiff has instituted the Suit for a decree of perpetual injunction and under the garb of the said Suit, claiming that the public toilets constructed by the Gram Panchayat belong to his family. I will not go into the merits of the matter, however, suffice it to say

that the plaintiff cannot be permitted to create evidence to substantiate his claim in a suit claiming a decree of perpetual injunction only. Otherwise also, the respondent Gram Panchayat has not disputed the description of the house and its measurement and boundaries. The learned Judge of the trial Court has therefore rightly rejected the Application Exhibit 50. No interference is required. The Writ Petition is hereby dismissed. No costs.

(V. K. JADHAV, J.)

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