

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12006 OF 2016

TRIVENDAS GURU RANKISHANDAS BAIRAGI
VERSUS
KANHAYALAL CHO GALAL DAIMA

Advocate for Petitioner : Shri P.D. Bhosale.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 10th January, 2018

PER COURT :

1. The petitioner who is the original plaintiff, is aggrieved by the order dated 16/12/2015, passed by the appellate Court in R.C.A. No. 14/2014, by which, application Exhibit 5 for adding Rajasthan Vipra Mandal as a party to the pending appeal, has been rejected.

2. Learned counsel for the petitioner has strenuously criticized the impugned order. Contention is that the plaintiff was made to believe by the original four defendants that if he donates land admeasuring 16 Acres and 14 Gunthas in Survey No. 82, village Jakhmathwadi, Tq. Gangapur to them, a trust would be formed and the name of plaintiff would be given to the trust. The original owner was an ascetic and believed the defendants and handed over the land to them. He passed away on 01/06/1994, and the petitioner was appointed as a successor.

3. Defendant Nos. 1, 3 and 7 have passed away during the pendency of the suit which was filed by the petitioner for seeking declaration of ownership and possession. As no steps were taken, the suit stood abated to the extent of these three deceased defendants.

4. The strenuous contention of the petitioner is that Rajasthan Vipra Mandal has been registered. As the suit land is in possession of such a trust, the trust through its trustees needs to be added as the defendants/respondents in the pending appeal.

5. The appellate Court, while dealing with the application Exhibit 5, has observed that the contention of plaintiff is that Rajasthan Vipra Mandal was registered in 2000 and R.C.S. No. 258/2007 was filed on 10/12/2007. Despite the same, the defendants in whose favour the original owner of the land has executed a will deed, were arrayed as defendants and this trust was not arrayed. The Appellate Court has also noted that the record maintained by the competent authority with regard to the registration of trust, does not find that Rajasthan Vipra Mandal was registered. Even, if it is believed that it was registered on 31/02/2000, the will deed executed by the original owner is not in favour of the trust, but is in favour of the persons who had been

arrayed as defendants. It is, in this backdrop that the application Exhibit 5, has been rejected.

6. I find that when the suit rests on a condition that the original owner has executed a will deed in favour of the four defendants, one out of four is still alive and holds the possession of the land on the basis of the will deed, a trust which may have been given a lease, will not be decisive.

7. The impugned order therefore, does not appear to be perverse or erroneous. This petition is devoid of merit, is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

S.P.C.