

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13470 OF 2017

KAMALKISHOR RAMESHWARJI KABRA
VERSUS
GHANASHYAM RAMESHWARJI KABRA

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Advocate for Petitioner : Shri Deokate M.G.
h/f Shri Katneshwarkar S.P.

Advocate for Respondent : Shri Bilolika Upendra B.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 17, 2018

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PER COURT :-

1. The petitioner is aggrieved by the order dated 3.8.2017, by which, application Exhibit 69 has been partly allowed and the petitioner/ plaintiff is permitted to lead evidence in respect of the document dated 23.3.1988, which is a *Sammati Patra*.

2. I have heard the learned counsel for the respective sides. It is strenuously contended on behalf of the respondents that the impugned order is just and proper and this petition be dismissed with heavy costs.

3. There is no dispute that the plaintiff has closed his evidence in RCS No.175 of 2013, which has been filed for seeking a declaration of his title and for recovery of possession.

An application Exhibit 59 was filed by the plaintiff praying for issuance of summons to two witnesses, so as to prove two documents Exhibits 17 and 68, which are already on record. The Record Keeper of the Municipal Council was required for proving the document at Exhibit 68 and one Shri Dharanidhar Bansilal Kabra was required to be summoned to prove the document Exhibit 17. By the impugned order, the trial Court has permitted the plaintiff to lead evidence in respect of Exhibit 68 which is the *Sammati Patra*. The request to lead evidence to prove Exhibit 17 stands turned down.

4. Despite the strenuous objections of the respondents, I find that the Court should endeavour to give an adequate opportunity to a litigant to pursue his case. The trial Court has not ruled that Exhibit 17 is an unnecessary document and is not required to be proved. The plaintiff insists that Exhibit 17 will have to be proved to support his case. The trial Court should have permitted the plaintiff to do so by imposing additional costs, so that he would have been granted an adequate opportunity of putting his case before the Court.

5. Considering the above, I find that the impugned order needs to be modified by permitting the petitioner / plaintiff to

lead evidence even on Exhibit 17, so as to prove the said document. As the evidence has already been concluded by the plaintiff, Exhibit 69 would be allowed by imposing further costs on the plaintiff. At this juncture, the learned counsel for the respondent submits that the costs may be donated to a humane cause and preferably for treating the patients.

6. In view of the above, this petition is allowed. The impugned order dated 3.8.2017 stands modified by allowing application Exhibit 69. The petitioner shall deposit on/or before 31.7.2018, an amount of Rs.1,000/- (Rs. One Thousand only) with the Government Medical College and Hospital, Aurangabad, **through Medical Officer, High Court Dispensary, Aurangabad**, either in cash or by Demand Draft (Demand Draft be drawn in the name of “**Dean, Government Medical College and Hospital, Aurangabad - CSR Fund**”) and shall report compliance of this direction by producing a receipt of having deposited the amount, before the trial Court, on/or before 8.8.2018.

(RAVINDRA V. GHUGE, J.)

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