

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1093 OF 2018

MANDABAI ADINATH TAGAD
VERSUS
VITTHAL BHANUDAS NANGARE AND ANOTHER

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Advocate for Petitioners : Shri Kakde Yuvraj V.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 30, 2018

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PER COURT :-

1. The petitioner is aggrieved by the order dated 1.9.2017, by which, the trial Court has rejected application Exhibit 60 filed by the petitioner / plaintiff praying for leave to lead secondary evidence with regard to a sale deed that was registered on 14.7.2006 and is said to have been lost. The petitioner has obtained a certified copy of the said sale deed from the Sub-Registrar's office, where the sale deed was registered.

2. Contention of the petitioner is that she has filed the suit purely for causing measurement of the suit land owned and possessed by her, to identify the encroachment and for recovery of possession of the encroached area.

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3. In the Written Statement, filed by the defendants, it is stated in paragraph No.11, which starts with the opening sentence, "खरी परिस्थिती अशी आहे की," that the plaintiff has purchased the suit land 5-6 years' ago and the bandh on the said suit land exists prior to her purchasing the said land.

4. This aspect has been considered by the trial Court while passing the impugned order and it is concluded that the factum of the plaintiff having purchased and possessed the suit land is not a dispute before the trial Court and no issue to that extent has therefore, been framed. In this backdrop, the trial Court concluded that when the plaintiff's purchasing of the suit land is not a matter of dispute, there is no reason to record secondary evidence with regard to the sale deed dated 14.7.2006.

5. Considering the above observations and the contents of paragraph No.11, I do not think that the issue of the petitioner having purchased the suit land is a matter of dispute before the trial Court. The impugned order, therefore, cannot be termed as being perverse or erroneous. This petition is, therefore, disposed off.

(RAVINDRA V. GHUGE, J.)

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