

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1695 OF 2018

VIJAY PURUSHOTTAM PATIL
VERSUS
YAMUNA USHA KHANDU PATIL AND OTHERS

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Advocate for Petitioner : Shri Savale Amit S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 12, 2018

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PER COURT :-

1. The petitioner is aggrieved by the order dated 28.11.2017, by which, the trial Court has rejected application Exhibit 40 filed by the petitioner / defendant No.1 seeking production of documents and for framing further issues under Order XIV Rule 4 of the CPC.

2. Contention is that the documents pertaining to the adoption of the petitioner by the deceased Kashibai and deceased Khandu need to be brought on record. After such documents are produced, the trial Court should appreciate the said documents and then frame further issues.

3. Grievance is that Exhibit 40 has been rejected by the impugned order without taking into account the fact that in the

matters under the Ceilings Act, Kashibai and Khandu had taken a stand that this petitioner is their adopted son. The original plaintiff - Yamuna would, therefore, be the sister of the petitioner who is also said to be party to some of the matters under the Ceiling Act. In this backdrop, the trial Court could not have rejected Exhibit 40.

4. A bunch of documents pertaining to the judgment of the Additional Commissioner, Nasik dated 20.5.1998, the mutation entry dated 12.5.2016 and other revenue records are produced before this Court to buttress the contention that the trial Court could have directed the plaintiff to produce the adoption deed.

5. I have considered the issues framed by the trial Court, wherein, the entire burden has been placed upon the plaintiff - Yamuna to prove that she was the only legal heir of deceased Khandu, that there was no convention or tradition of adopting a son who was more than 15 years of age, in the community to which she belongs, that the plaintiff should prove that this petitioner is not the adopted son etc. The onus and burden therefore, is on the plaintiff as regards issue Nos.1 to 4.

6. The trial Court has recorded in the impugned order that the petitioner has not specifically described the documents which are

sought to be produced. The prayer in Exhibit 40 is that the documents discussed in paragraph Nos.1 and 2 of Exhibit 40 should be produced. I find that in so far as paragraph No.1 is concerned, this petitioner has merely discussed the history of the litigation with regard to the proceedings under the Ceiling Act. No specific document whose details can be said to be furnished, has been mentioned in paragraph No.1. In so far as paragraph No.2 is concerned, certain documents and case numbers have been mentioned and it is prayed that all the documents connected with the said court proceedings should be produced by the plaintiff.

7. It is well settled law that when a notice for production of documents is issued and directions are sought to compel the other side to produce documents, the applicant has to pointedly indicate the document which is sought to be produced and its relevance to the case in hand. What is mentioned in paragraph 1 is purely a discussion and in paragraph 2, this petitioner contends that the entire record with regard to Ceiling Case No. 9 of 1975, Review Case No.131 of 1976, Review Case No.18 of 1977, Writ Petition No.3243 and 3604 of 1980 need to be produced. Keeping in view the law laid down by this Court in the matter of 20th Century Fox Corporation (India) (P) Ltd. Vs. F.H. Lala [(1974) II LLJ 156 Bom.], such an application cannot be entertained.

8. Nevertheless, the trial Court has recorded in paragraph No.8 of the impugned order that since the documents referred to in paragraph No.2 of Exhibit 40 are documents pertaining to Court proceedings, this petitioner can produce them by way of certified copies, if he so desires. Even otherwise, I do not find any reason to entertain the prayer for framing of new issues for the reason that this petitioner, firstly, contends that he is unable to formalize and propose the new issues to be framed and secondly, as I find that the issues cast are with regard to the existence of this petitioner as an adopted son and hence the plaintiff who has specifically denied his legal existence, is cast with the burden of proving the first four issues.

9. In the light of the above, this petition being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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