

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.3429 OF 2015

Savita Sharadchandra Kuber,
died, through her L.Rs:

01 Sharadchandra s/o Dattatraya Kuber,
age: 61 years, Occ: Agril.,
R/o Chakur, Tq. Chakur,
District Latur.

02 Minakshi w/o Nandkumar Kulkarni,
age: 40 years, Occ: Household,
R/o Shastri Nagar, Jawahar Colony,
Aurangabad.

03 Snehal @ Naina w/o Suhasrao Kulkarni,
age: 35 years, Occ: Household,
R/o Bhagwati Colony, Trimurti Chowk,
Aurangabad.

Petitioners

Versus

01 Ramdas s/o Dhondiba Suryawanshi,
age: 65 years, Occ: Agril.,
R/o Chakur, Tq. Chakur,
District Latur.

02 Vilas s/o Ramdas Suryawanshi,
age: 38 years, Occ: Agril.,
R/o Chakur, Tq. Chakur,
District Latur.

Respondents

Mr.S.V.Natu, advocate for the petitioners.
Mr.V.P.Golewar, advocate for the Respondents.

CORAM : RAVINDRA V. GHUGE, J.

DATE : 26th August, 2019

ORAL JUDGMENT :

1 Rule. Rule made returnable forthwith and heard finally by consent of the learned Counsel for the respective parties.

2 The petitioners, who are the legal representatives of the deceased plaintiff, are aggrieved by the order dated 06.02.2015, passed by the trial Court, by which, application Exhibit-59 filed by the plaintiff seeking an exhibit number to a registered sale deed No.86 of 1994 and to read it in the evidence, has been rejected.

3 The issue to be considered in this petition is very short. The plaintiff has filed a suit seeking a declaration of ownership of the suit property and a permanent restraining order against the defendants to avoid obstructing her peaceful possession over the suit property. The suit was filed on 27.07.2011.

4 The defendants have filed their written statement below Exhibit-32 on 20.12.2011. With regard to the registered sale deed no.86 of 1994, the defendants have stated, in paragraph no.4 of their written statement, as under:

4 It is true that thereafter defendant No.1 had sold 1 H. 02 R. land to Sharad Kuber and Bhausahab Mane through registered sale deed bearing Day Book No.86/94 but it is submitted that inadvertently and by mistake boundary from the Western side has been shown wrongly as land of Bhanudas Suryawanshi. In fact there is/was remaining land of defendant out of Gat No.420 from Western side of the land which is under sale deed bearing Day Book No.86/94 to Sharad Kuber and Bhausahab Mane. It is submitted that the defendant No.1 was owner and possessor of the land Gat No.420 to the extent of 2 H. 10 R. out of which he has alienated 80 R. land to Vasudev Bejgamwar and others through registered sale deed bearing Day Book No.1986/93 then 1 H. 30 R. land remain in possession of the defendant No.1 out of which 1 H. 02 R. land had been alienated to the Sharad Kuber and Bhausahab Mane then out of 28 R. land remains in the name of defendant No.1 from the Western side of land alienated to Sharad Kuber and Bhausahab Mane.

5 As such, the defendants admit that defendant no.1 had sold 1 hectare 2 Ares land to Sharad Kuber (husband of deceased

plaintiff) and Bhausahab Mane. The registered sale deed bearing Day Book No.86 of 1994 is admitted. The only controversy raised by the defendants is that the boundary on the western side has been wrongly shown as the land belonging to Bhanudas Suryawanshi. In fact, the remaining land out of G.No.420 on the western side, excluding the land sold by sale deed No.86 of 1994, belongs to defendant no.1 to the extent of 18 Ares.

6 It is undisputed that the registered sale deed No.86 of 1994, placed on record, is an original sale deed. It requires no discussion that an original document has to be granted an exhibit number and if the contents are disputed, then the party, who produces the document, has to prove its contents. Granting of an exhibit number does not mean that the document is proved under the Evidence Act.

7 By an application Exhibit-59, the plaintiff had prayed for exhibiting the said sale deed so as to be read in evidence. I do not find any difficulty in accepting application Exhibit-59 since the document is in original form and the existence of the document, inclusive of its contents, except the alleged mistake about the western side boundary, is admitted. This aspect has

been lost sight of by the trial Court.

8 In view of the above, this petition is partly allowed. The impugned order dated 06.02.2015 is quashed and set aside and the application Exhibit-59 is allowed. It is made clear that though the defendants admit the said sale deed, as they are contending that there was a mistake in mentioning the land on the western side in G.No.420, they would be at liberty to prove the said pleading by leading evidence and this aspect shall be considered by the trial Court while deciding the suit.

9 Rule is made partly absolute in the aforesaid terms. No costs.

RAVINDRA V. GHUGE
JUDGE

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