

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3883 OF 2018

ANIL DAMU GAIKWAD
VERSUS
YAMUNABAI DADA GAIKWAD AND OTHERS

...
Advocate for the Petitioner : Shri Shermale K. N.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 11th April, 2019

Per Court:

1 This Court (Coram : V.L.Achliya, J.) had issued the notice on
26.04.2018 only to Respondent No.1.

2 Despite service of court notice on the contesting Respondent
No.1 through paper publication, no appearance has been entered or
caused in this matter.

3 I have considered the contentions of the Petitioner and I have
gone through the petition paper book with his assistance.

4 The Petitioner/ Plaintiff has preferred RCS No.117/2010 for
seeking a declaration that the sale deed dated 15.04.1980, allegedly
executed by the father of the Plaintiff in favour of Defendant No.1, be
declared as null and void.

5 It is the case of the Petitioner that the original sale deed is in

the custody of Defendant No.1. The recording of oral evidence in the suit has commenced. At this juncture, the Petitioner has filed the application Exhibit 78 on 19.12.2017 seeking a direction that Defendant No.1 should produce the original copy of the said sale deed before the Court. The record reveals that Defendant No.1 is not appearing in the proceedings. The Trial Court has rejected Exhibit 78 on the ground that the application is not filed in proper format, has been filed belatedly and as Defendant No.1 is abstaining from the proceeding, it would not be proper to pass an order against Defendant No.1.

6 I find that Exhibit 78 carries the title as "For Interrogatories and Better Particulars". In the said application, a prayer is made that the original sale deed is in the custody of Defendant No.1 and he should be directed to produce the same. I do find that the application has vague and ambiguous pleadings. It is not supported with a verification or an affidavit. The Trial Court has rightly observed that such an application has been filed without following the due procedure.

7 However, it cannot be ignored that if the original sale deed executed by the father of the Plaintiff in favour of Defendant No.1, is in the custody of the latter, the Plaintiff would not be unjustified in seeking production of the said document.

8 Considering the above, this Writ Petition is disposed off by granting liberty to the Petitioner to file a proper application under Order

XII Rule 8 or Order XI Rule 12 or Order XI Rule 14 of the Code of Civil Procedure, for seeking production of the document.

9 It is made clear that the Trial Court cannot abdicate its jurisdiction to pass an appropriate order merely because Defendant No.1 is not appearing in the suit. It is not the outlook of the court to refrain from passing an order against a litigant, who, by choice, remains away from the proceeding.

kps

(RAVINDRA V. GHUGE, J.)