

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.8456 OF 2015

Siddhesh Padmakar Agresar

Petitioner

Versus

Ganesh s/o Devidas Saraf & others

Respondents

Mr.S.V.Natu, advocate for the petitioner.

CORAM : RAVINDRA V. GHUGE, J.

DATE : 26th August, 2019

PER COURT:

1 Though all respondents are served by the Court notice, they have chosen to remain absent. No appearance has been entered either in person or through an advocate.

2 This Court (**Coram: Sunil P. Deshmukh, J.**) had heard the learned advocate for the petitioner and had passed the following order on 25.08.2015:

"1 After hearing petitioner, it appears that situation boils down to expunction of the observations appearing in the impugned order dated 22-01-2015 since, according to the contention of the petitioner those may influence

affect/hamper decision in main suit.

2 As such, notice to respondents to the extent of only expunction of observations."

3 I have heard the learned advocate for the petitioner and have gone through the petition paper book with his assistance. I have considered the averments set out in the memo of the petition.

4 I find that the petitioner-plaintiff has filed Exhibit-24 seeking a 'judgment on admissions' and in the alternative, for appointing a Court Commissioner and allotting his share so as to enable him to take possession of the said property. The trial Court has concluded that these aspects would require leading of evidence as it would be unsafe to deliver a judgment since it finds that the recording of evidence would clear all clouds. However, while rejecting Exhibit-24 by the impugned order dated 22.01.2015, it has come to certain conclusions including that the alleged sale deed was not made for legal necessity and the said contention is denied by defendant no.1. The trial Court has also mentioned that all issues can be dealt with after leading of evidence in the matter.

5 So also, this Court has consistently passed orders concluding that a Court Commissioner should not be appointed until the recording of oral evidence is concluded. Some of the orders passed by this Court are as under:

(a) Syed Mushtaque Ahmad Syed Ismail and others vs. Syed Ashique Ali Khan Haidar Ali, 2012 (1) ALL MR 80 : 2011 (6) Mh.L.J. 334.

(b) Dnyandeo Vithal Salke and others vs. Dagdu Kadar Inamdar, 2017 (3) Mh.L.J. 314.

(c) **Chandrakant Kashinath Dike and others vs. Smt.Satyabhama Vishwanath Dike and another**, Writ Petition No.8877/2013 (Aurangabad Bench) decided on 17.01.2014.

(d) **Dhondiba Bapu Zaware vs. Santosh Paraji Zaware and others**, Writ Petition No.4756/2014 (Aurangabad Bench) decided on 08.12.2014.

6 As such, after the recording of oral evidence in RCS No.03 of 2012, if the application for seeking appointment of a Court Commissioner is filed by any of the litigating sides, the trial Court would consider the said application on its own merits.

7 In view of the above, this petition is disposed off. Keeping in view the earlier order dated 25.08.2015, all the observations made by the trial Court in the impugned order shall be restricted to the decision on application Exhibit-24. After leading of oral and documentary evidence, the trial Court would consider the same on its own merits and would adjudicate upon the suit by considering the pleadings of the parties without being influenced by the order dated 22.01.2015.

RAVINDRA V. GHUGE
JUDGE

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