

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

907 WRIT PETITION NO.7321 OF 2018

HAMID JABBAR ATTAR
VERSUS
VITTHAL NARAYAN MULE AND OTHERS

.....
Advocate for Petitioner : Mr. Gundre Suraj V
Advocate for Respondents 1A to 2D: Mr. D.P. Deshpande
.....

CORAM : V. K. JADHAV, J.
DATED : 18th DECEMBER, 2019

PER COURT:-

1. By consent, heard finally at admission stage.
2. The petitioner-defendant No.3 has filed an application Exh.209 in Regular Civil Suit No. 148 of 2012 seeking permission to examine three witnesses, as witnesses on sale deeds Exh. 162 to 167 in terms of application Exh.179. The trial court by impugned order dated 20.6.2018 below Exh.209 in R.C.S. No. 148 of 2012 rejected the said application. Hence, this writ petition.
3. Learned counsel for the petitioner-original defendant No.3 submits that the petitioner being aggrieved by the order dated 08.07.2015 below Exh.179 passed by the trial court, wherein the petitioner-defendant No.3 was not permitted to lead oral evidence as the power of attorney holder Ejaj had led evidence on behalf of defendant No.3, preferred writ petition No. 7926 of 2015. This court

(Coram: Ravindra V. Ghuge, J.) by order dated 10.8.2017 allowed the petition and quashed and set aside the order dated 08.07.2015 and further allowed the application Exh.179 by following directions:-

- “[a] As per the contention of the petitioner, he shall appear before the Trial Court on 01.09.2017 for recording his examination-in-chief.
- [b] If he chooses to file an affidavit in lieu of his evidence and if a copy of the same is delivered to the plaintiff at least 7 days in advance, the plaintiffs would cross examine him on 01.09.2017.
- [c] In the event the affidavit in lieu of examination-in-chief is tendered at the eleventh hour to the plaintiffs, they would be at liberty to seek an adjournment for cross-examination and for which purpose the petitioner shall remain present so as to facilitate the cross-examination.
- [d] The petitioner shall deposit an amount of Rs.5,000/- before the Trial Court on or before 01.09.2017 and the said amount shall be withdrawn by the plaintiffs in equal proportions, without any conditions.
- [e] It is made clear that this petition is entertained only to allow the petitioner to lead evidence.
- [f] Since the suit has been instituted in 2001, the Trial Court would be justified in refusing adjournments, if sought on unreasonable grounds and shall endeavour to decide the

suit as expeditiously as possible and preferably on or before 31.03.2018.”

4. Learned counsel for the petitioner submits that this court has allowed application Exh.179 and as such, the petitioner-defendant No.3 has examined himself on oath and further filed an application Exh.209, which is subject matter of present writ petition, for issuing summons to those three witnesses on sale deeds. However, the trial court without going through the order passed by this Court (Coram: Ravindra V. Ghuge, J.) in writ petition No. 7926 of 2015, rejected the said application. Learned counsel submits that even though the petitioner-defendant No.3 has examined 2 witnesses on sale deeds prior to filing of application Exh.179 and 209 respectively, however, those witnesses pertain to some other sale deeds and not the sale deeds referred in the application Exh.209. Learned counsel submits that in terms of the order passed by this Court (Coram: Ravindra V. Ghuge, J.) in writ petition No. 7926 of 2015 the trial court ought to have allowed the said application Exh.209.

5. Learned counsel for the respondents-original plaintiffs submits that petitioner-defendant No.3 has filed an application Exh.153 seeking permission to adduce secondary evidence regarding the sale deeds by defendant Nos. 1 to 3. By order dated 7.11.2013 the trial court has allowed the said application Exh.153 and granted permission to the defendants, including the present petitioner to

adduce secondary evidence in the nature of certified copies relating to the sale deeds as referred in the operative part of the order. Learned counsel submits that the petitioner is taking advantage of the order passed by this court in writ petition No. 7926 of 2015. Learned counsel submits that as per the directions given by this court (Coram: Ravindra V. Ghuge, J.) in writ petition No. 7926 of 2015, the petitioner-defendant No.3 has examined himself on oath. Learned counsel submits that same is also reflected from the order passed by this court, as directions were issued to the extent and for examination of the petitioner-defendant No.3 and not otherwise. Learned counsel submits in clause (e) of operative part of the order dated 10.8.2017 passed in writ petition No. 7926 of 2015, this court has made it clear that the said writ petition was entertained only to allow the petitioner to lead evidence. Learned counsel submits that in view of the same, even though the petition is allowed that is to the extent of evidence to be adduced by the petitioner by examining himself on oath and not otherwise, the trial court has rightly rejected the application Exh.209. No interference is required. There is no substance in the writ petition.

6. On perusal of the order passed by this Court (Coram: Ravindra V. Ghuge, J.) in writ petition No. 7926 of 2015 dated 10.08.2017 in para 10 of the order, it is observed that the petitioner deserves to be granted an opportunity to lead oral evidence in order to ensure that the ends of justice are met and the hardship caused to the plaintiffs

can be compensated by imposing costs. Then this court allowed the application Exh.179 and further directed the petitioner-defendant No.3 to appear before the trial court on 01.09.2017. Even in the operative part of the order, this court has taken care to make it in time bound manner and further in the event if any adjournment is sought then also given further directions. This court has further made clear in clause (e) that the petition is entertained only to allow the petitioner to lead evidence. In para 8 of the said order, this Court has considered the plight of the petitioner since the G.P.A. holder Ejaj Ahmed has led his evidence to the extent of his knowledge and if he was a minor at the time of the registration of the sale deed dated 14.06.1990 the court has observed that the G.P.A. holder may not be able to depose to that extent. This court has considered that the petitioner-original defendant No.3 claims to have personal knowledge about the sale deed at issue and the court therefore, observed that he might lose the immovable property if evidence is not permitted. The petitioner to examine himself before the court since the G.P.A. examined on behalf of defendant had no knowledge of certain events, including the execution of sale deed.

7. It further appears that the petitioner-defendant No.3 alongwith other defendants was permitted to lead secondary evidence way back in the year 2013 in respect of same sale deeds. It further appears that the petitioner-defendant No.3 has kept mum for almost about five years and after the order passed by this court in writ

petition No. 7926 of 2015 filed application Exh.209 for examination of witnesses on the said sale deeds. Thus, considering entire aspects of the case, I do not find any fault in the order passed by the trial Court. There is no substance in this writ petition. Hence, I proceed to pass the following order:-

O R D E R

The writ petition is hereby dismissed. The writ petition is accordingly disposed of.

(V. K. JADHAV, J.)

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