

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10470 OF 2019

MASU MAHADU DEVKATE
VERSUS
NARAYAN HARIBHAU DEVKATE AD OTHERS

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Advocate for Petitioner : Shri Bangar Nilkanth P.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 23, 2019
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PER COURT :-

1 The petitioner / defendant in RCS No.614 of 2012 is aggrieved by the order dated 5.4.2019, by which, the trial Court has rejected application Exhibit 103 filed by the petitioner in RCS No.614 of 2012. The trial Court has declined to add issues to those which were cast on 16.7.2014.

2 The learned Advocate for the petitioner has strenuously criticized the impugned order. Contention is that the suit is filed purely for seeking injunction against the defendant. The trial Court has framed three issues on 16.7.2014. The plaintiff has claimed that he is in possession of the suit property on the basis of a compromise deed between the parties. The trial Court has framed an issue at Sr. No.1 as to whether the plaintiff is legally in possession of the

property and at issue No.3, whether the plaintiff is entitled for injunction.

3 The grievance of the petitioner / defendant is that the trial Court has not framed an issue as to whether the plaintiff proved that he is in possession of the suit property on the basis of a compromise deed. There is no dispute that the petitioner has averred that there is a compromise deed and though the defendants have admitted the same, it is contended that the compromise was not acted upon.

4 I find that though the issues were framed in July, 2014, Exhibit 103 seeking recasting of issues has been filed on 16.3.2019. Notwithstanding this position, the fact remains that it would be the plaintiff who would have to prove the compromise deed and if a specific issue is not framed, it would be the outlook of the plaintiff to approach the Court. The defendants have contended that though the compromise deed was in existence, the parties have not acted upon the same.

5 It is well settled that if a particular aspect is admitted by the parties, they do not have to prove it. If the compromise is in existence and not acted upon by the parties, an issue as to whether a compromise is effected in RCA No.11 of 1990, is not required to be

proved. So also, issue Nos.1 and 3 would take care of the pleadings of the parties as the plaintiff will have to prove that he is in lawful possession and whether he is entitled for injunction.

6 In the light of the above, I do not find that the impugned order could be termed as being perverse or erroneous. This petition, being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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