

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2205 OF 2018

SHANTABAI WAMAN JOGDAND (DECEASED)
THROUGH LR
VERSUS
DAMODHAR BALASAHEB DOLAS

Advocate for Petitioner : Mr. C.V. Dharurkar.
Advocate for Respondent : Mr. G.K. Naik Thigle
h/f. Ms. S.V. Daund.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 12.03.2019

PER COURT :

1. On 27.02.2018, while issuing notice, I had recorded the submissions of the petitioner in the order dated 27.02.2018, which reads as under :

“1. The petitioner is aggrieved by the order dated 12/09/2017 by which the Executing Court has rejected application Exh.19 filed by the petitioner/judgment debtor for seeking an amendment in paragraph No.6 of the written say filed on record.

2. Contention is that, by the first sale deed dated 31/08/1978, the deceased Shantabai had purchased land admeasuring 3 acre and 35 gunthas. By sale deed dated 09/04/1979, it is mentioned that Shantabai sold 2 acres of land. However, it was proved in RCS No.299/1993 that Shantabai had actually sold only 68 gunthas instead of 80

gunthas and the rest of the land which is about 52 gunthas would remain with Shantabai. The Trial Court, by judgment dated 26/09/1993, though dismissed her suit, answered the issue of sale of 68 gunthas owned by Shantabai in the affirmative since it was proved that only 68 gunthas were sold and not 2 acres. This has been consistently held and no Court has overturned these findings.

3. *Grievance is that in Reg.Dkt.No.33/2015, where Shantabai who recently passed away, was a judgment debtor, she erroneously mentioned in the written say dated 05/01/2016 that Shantabai does not have any land available in S.No.180. The Gav Namuna No.8-A extract indicates that Shantabai has about 53.14 gunthas in Survey No.180 and the same is reflected in the online 7/12 extract. Hence the amendment was sought in order to remove an erroneous statement made out of inadvertence. The Trial Court has refused leave to amend by the impugned order dated 12/09/2017.*

4. *Issue notice to the sole respondent/decreed holder, returnable on 28/03/2018. Copy of the petition paper book for issuance of notice shall be supplied on or before 05/03/2018, failing which, this petition shall be dismissed on 06/03/2018 without reference to this Court.*

5. *On the condition that the petitioner Machindra shall deposit an amount of Rs.5,000/- before the Executing Court in RD No.33/2015 on or before 16/03/2018, the Executing*

Court shall adjourn the said proceeding till the next date in this matter. Failure to deposit the said amount would result in vacating the ad-interim relief on 17/03/2018.”

2. Learned advocate appearing on behalf of the decree holder has opposed this application. He points out from the map that the petitioner does not have any land available in Survey No. 180 AA/2. The executing court has rightly rejected Exhibit 19.

3. It appears from the record that in the written say filed by all the petitioners, a statement was made in the last paragraph No. 6 that the judgment debtors did not have any land owned by them in Survey No. 180 and therefore, there was no question of selling any portion to the decree holder.

4. The petitioners moved Exhibit 19, seeking correction in the written say on the ground that it is only Machindra who does not own any land in Survey No. 180 and the revenue records indicate that Shantabai had 0.53 R in the said survey number. Because an incorrect statement is made in the written say, that strangers or even the decree holders are likely to take undue advantage and grab the property of the petitioners.

5. Learned counsel for the decree holders submits that the land

was earlier measured. An admission given by the judgment debtor in the written say cannot be withdrawn causing prejudice to the decree holder. If the petitioner has any land in Survey No. 180 and if there is any encroachment or land grabbed, the petitioner can avail of a civil remedy.

6. It is well settled law that an admission given cannot be retracted if it causes any legal injury to the other side. In the judgment and decree dated 09.04.2002 in RCS No. 724/1998, the plaintiff is held to be the owner and possessor of only 68 R land. The suit was decreed and the defendants were directed not to interfere with the possession of the plaintiff in the land admeasuring 0.68 R, portion marked in black ink in the sketch map placed on record on page No. 66 in the petition paper book.

7. In view of the above, since an admission made in the written statement cannot be withdrawn, though contradictory stand can be taken by the defendant, I deem it appropriate to permit the petitioner to file an additional say in the pending Regular Darkhast No. 53/2013. The decree holder would be at liberty to file an additional affidavit to meet the contention set out in the additional written say. Needless to state, the executing Court would consider the rival contentions of the parties on their own merits and the judicial

findings recorded in the earlier judgments of the civil Court that the respondent Damodhar is the owner and possessor of 68 R land.

8. The costs of Rs. 5,000/- deposited by the petitioner in the executing court can be withdrawn by the respondent Damodhar along with accrued interest, if any, without conditions.

9. It is made clear that if this petitioner/Machindra or the respondent/Damodhar are involved in further litigation or there is any litigation with reference to land Survey No. 180, the said litigation would be considered by the concerned Court on its own merits in the light of the pleadings of the parties and the contradictory statement made by Machindra, before the executing Court in this proceedings shall not come in way of any of the litigating sides.

(RAVINDRA V. GHUGE, J.)