

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

WRIT PETITION NO.14356 OF 2018

**SHEVANTABAI KISAN SANKPAL
VERSUS
BHASKAR DADARAO WANKHEDE AND ANR**

...
Advocate for the Petitioner : Ms. Fatema S. Kazi

...
**CORAM : RAVINDRA V. GHUGE, J.
DATED : 18th JANUARY, 2019.**

...

PER COURT :

1. This matter was heard at length on 07/01/2019. I had passed the following order after hearing the petitioner :-

"1. While rejecting the application Exhibit 18 under Order 1 Rule 10 of the Code of Civil Procedure, the Trial Court has concluded that though the Petitioner may have an interest in the property, she is not concerned with the cause of action in the suit.

2. The contention of the Petitioner is that the Plaintiff has stolen the suit plot and has illegally erected the construction.

3. The learned Advocate for the Petitioner desires to take instructions as to whether, the Petitioner has filed a specific suit for seeking possession of the suit plot which, according to her, has been stolen by the said Plaintiff.

4. Stand over to 18.01.2019 in the urgent admissions category."

2. Though I was not inclined to entertain this petition, I had granted one opportunity to the petitioner to collect instructions as to whether, the petitioner has filed a specific suit for seeking possession of the particular plot which according to her has been stolen by the plaintiff.

3. Today it is submitted, on instructions, that the petitioner has preferred a specific suit bearing No. 100/2016 for the recovery of a plot which the petitioner claims to have been stolen by the plaintiff in RCS No. 786/2017.

4. I find from the impugned order that the suit has been preferred by the plaintiff as regards alleged illegalities in his construction over the suit plot. The Trial Court has specifically recorded that the issue of the right or title of the plaintiff is not to be considered in the suit as the plaintiff has only assailed the action initiated by the Municipal Council as against his construction. I find that the petitioner herein has already instituted a specific suit for claiming relief of cancellation of the sale-deed which is said to be executed by her in favour of the plaintiff in RCS No. 786/2017.

5. The petitioner relies upon the judgment of this Court in the matter of *Ranjitsingh Linga and another Vs. Municipal Corporation of Greater Mumbai and another*, 2010(2) *Mh.L.J.* 703.

6. I find in the case of *Ranjitsingh* that the third party had claimed to be the owner of the constructed portion which was sought to be demolished. The third party had come forward with a case that it had erected the said construction and the corporation was demolishing the said construction without hearing the said owner. In the instant case, the petitioner is said to have executed a sale deed in favour of the plaintiff in RCS No. 786/2017. It is not the case of this petitioner that she has erected the house. Her case is that the said plaintiff had stolen her plot and had himself erected the construction.

7. In view of the above, this petition being devoid of merit is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

shp/-