

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

WRIT PETITION NO. 15407 OF 2019

VINOD NAMDEO MEDHE
VERSUS
PRABHAKAR SUPDU MEDHE AND OTHERS

...
Advocate for the Petitioner : Shri P. R. Katneshwarkar
and Ms. A. S. Jadhav
...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 18th DECEMBER, 2019

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PER COURT :

1. The Petitioner, original defendant No. 2 in Special Civil Suit No. 213/2003, is aggrieved by the orders dated 13/11/2019 below Exhibit 1205, dated 16/11/2019 below Exhibit 1206 and dated 13/11/2019 below Exhibit 1, passed by the Trial Court.

2. I have considered the strenuous submissions of Shri Katneshwarkar, learned Advocate appearing on behalf of the Petitioner. With his assistance, I have gone through the nine grounds formulated in the memo of the petition. I have considered the record

available with his assistance.

3. The record reveals that the suit has been filed in 2003 seeking a declaration of ownership on the basis of adverse possession. So also, a sale-deed dated 04/07/2003 is sought to be declared as being void. Several other prayers have been subsequently added by amendment to the plaint.

4. The issues were framed initially in 2012 and subsequently further issues were recast on 10/12/2016 and 24/01/2017. When the turn of Petitioner No.2 arrived for leading oral evidence, the Trial Court noted the delaying tactics and passed an order of closing the evidence of the Petitioner by order dated 13/11/2019 below Exhibit 1205. The Trial Court has recorded that defendant No.2 avoided leading his evidence and instead submitted a list of 22 witnesses contending that all these witnesses need to be examined. Actually, the Petitioner had tendered an affidavit in lieu of examination in chief on 21/08/2018 and after several chances being granted, the cross-

examination could not be completed as the Advocate for the plaintiff remained absent and sought adjournment on the ground of his absence. By recording the conduct of the litigants, further cross-examination of the Petitioner was closed.

5. I have perused the application Exhibit 1205, by which, a request was made by the Petitioner to examine 22 witnesses. There are two paragraphs devoted for putting forth the request to examine 22 witnesses. There is not a single sentence to indicate as to which witness is necessary to support the pleadings of the Petitioner. A bald statement is made in paragraph 2 that either the Manager or any well informed person representing several organizations, should be summoned for examination in the said proceedings. Some names of witnesses have also been mentioned in the said list, though there are no pleadings as to how these witnesses are connected with the pleadings of the Petitioner.

6. It requires no debate that every Court has to be cautious while permitting litigants to summon witnesses in the absence of list of witnesses and more so after the recording of oral evidence of the plaintiffs is over. The chance of manufacturing witnesses cannot be ruled out.

7. Considering the above, I do not find that the Trial Court has committed any error in rejecting application Exhibit 1205.

8. The Petitioner thereafter moved application Exhibit 1206 stating that it is a review petition seeking review of the order dated 13/11/2019 passed below Exhibit 1205. The said application is without any verification or an affidavit. Moreover, the Trial Court has considered the said application and has reiterated its conclusions as to the manner in which the Petitioner is delaying the proceedings and is desirous of examining 22 witnesses, whose nexus with the litigation is unexplainable.

9. I, therefore, do not find that the order dated 16/11/2019 rejecting application Exhibit 1206, could be termed as being perverse.

10. Considering the above, this petition, being devoid of merit, stands dismissed.

(RAVINDRA V. GHUGE, J.)

shp/-