

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8504 OF 2019

Prakash Devji More ... Petitioner

Versus

Smt. Komal Kamlakar

Jamsandekar And Others Respondents

.....

Mr. Bharat Joshi i/b Mr. R.K. Mendadkar for the Petitioner.

Mr. Nitin P. Dalvi i/b Ms. Amruta D. Devkat for Respondent No.1.

Mr. C.D. Mali, AGP for the State.

• • • • •

CORAM : S.C. GUPTE, J.

DATE : 28 AUGUST 2019

P. C. :

. Heard learned Counsel for the parties.

2 This writ petition challenges an order passed by the Court of Small Causes at Mumbai in a municipal election petition. The impugned order has been passed on an application for issue of witness summons for leading rebuttal evidence on behalf of the Petitioner herein (original Respondent to the election petition, whose election was challenged in the petition). The controversy concerns ownership of the Petitioner of a certain agricultural land. It was the grievance of Respondent No.1 herein (the election petitioner) that the Petitioner, whilst giving details of his immovable properties, had made a false statement in the documents submitted to the election officer that he did not have any agricultural property either in his individual

name or jointly with others, whereas he, in fact, owned jointly with his brothers agricultural land at Village Bhambarde, Tal. Mulshi, District Pune, particulars of which were set out in the election petition. In response, it was submitted by the Petitioner in his written statement that the property at Village Bhambarde was sold by him long back, i.e. on 24 November 2016, by a registered agreement for sale for valuable consideration and that, therefore, his statement that he did not own any property as of the date of submission of his election papers was correct. The Petitioner subsequently applied for witness summons by filing an application, being Exhibit 55, for examining the witnesses named in the application with a view to prove that the subject property was gifted by him to his sister, one Hausabai Balu Yadav. That application was rejected by the trial court on the ground that no such case was pleaded in the written statement of the Petitioner. The court observed that it was a basic principle of law that a case must be first pleaded before any evidence was allowed be led on such case. The court observed that the Petitioner had taken a defence in his written statement that he had sold the property by a registered agreement for sale and not that the property was gifted by him to his sister Hausabai. The court held that evidence inconsistent with the Petitioner's pleading could not be led by him and accordingly, rejected the application. This order has not been challenged by the Petitioner and has attained finality.

3 Subsequently, the Petitioner made another application, being Exhibit 56, for issuance of witness summons to the same witnesses for

leading the same evidence terming it this time, however, as rebuttal evidence concerning the election petitioner's case of his joint ownership of the property named in the election petition. Merely by terming the application differently, the Petitioner could not get the witness summons issued. The trial court, whilst rejecting the current application, being Exhibit 56, observed that the Petitioner herein was claiming the same relief which was rejected by the earlier order passed on Exhibit 55. The court observed that, if at all the Petitioner was aggrieved by that order (i.e. order passed on Exhibit 55), it was for him to challenge it; he could not present a new application with different words, but for the same relief, which was rejected earlier.

4 No infirmity can be found with the impugned order of the trial court. The case of joint ownership of the Petitioner vis-a-vis the agricultural property was defended by him on the ground that the property was sold by him by a registered agreement for sale. He could not have, in the premises, led evidence to show that the property was gifted away by him to his sister, whether to prove the gift of the property or to rebut the opponent's case of his joint ownership in respect of the property.

5 There is, thus, no merit in the petition. The writ petition is dismissed.

(S.C. GUPTE, J.)