

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3731 OF 2020
(Dattatraya s/o Baburao Gavali, died, through LR's Vs. Surekha w/o
Manikrao Patil and others)

Mr.K.K.Kulkarni, Advocate for the petitioners.
Mr.P.S.Chavan, Advocate for respondent Nos. 1 to 3.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 09/03/2020

PER COURT :

1. The petitioner/defendant is aggrieved by the order dated 03/02/2020 passed by the Trial Court, vide which, application Exh.94 filed by the petitioners seeking leave to grant exhibit number to a photo- stat copy in RCS No.330/2012, has been rejected.
2. I have considered the submissions of the learned Advocates for the respective sides and have gone through the petition paper book as well as the affidavit in reply of the plaintiff.
3. The petitioners contend that though the suit is for measurement of properties, fixation of boundaries and injunction, the present petitioners have raised an issue of title to the suit

property. A document which would decide the title of the parties dated 04/04/1988, was lost and hence the photostat copy is placed on record.

4. The petitioners rely upon a judgment delivered by the Hon'ble Apex Court in the matter of Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by LR's and others [AIR 2008 SC 2033], in which it has been held that when a suit for injunction simplicitor is concerned only with possession, the issue of title will not be directly and substantially in issue. But in cases where de-jure possession has to be established on the basis of title to the property, the issue of title may directly and substantially arise for consideration.

5. The learned Advocate for the plaintiff points out from the affidavit in reply and the documents annexed thereto that, the issue of title to the present suit property was already a subject matter of adjudication in an earlier RCS No.166/2003. The sale deed dated 04/04/1988 was subjected to adjudication and it was held that it was not a nominal sale deed. The plaintiff in the present suit was therefore held to be the title holder of the property in the 2003 suit. Reg.Civil Appeal No.134/2006 was also dismissed on 07/11/2014. It is informed that a second appeal is now pending. As such, it is

apparent that, as the issue of title to the said suit property has already been decided by 2 Courts in the 2003 suit, the judgment in Anathula Sudhakar (supra) would not be applicable to this case. The petitioners in the 2012 suit would be precluded from raising an issue as regards title as the said issue has already been decided by 2 Courts.

6. In view of the above, on this count as well and on the ground of a document sought to be executed being purely a *photostat* copy, with no foundational pleadings about the original having been lost by this petitioner, the impugned order cannot be branded as being perverse or erroneous.

7. This petition, being devoid of merit, is therefore dismissed.

(Ravindra V.Ghuge, J.)