

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 12140 OF 2018
with
WRIT PETITION NO. 7293 OF 2019**

Gurudas Padmnabh Shanbhag

..Petitioner

v/s.

Sou. Gangubai Yellappa Dongare
& Ors.

..Respondents

Mr. Akshay Kulkarni for the Petitioner.
Mr. Sagar Ghogare i/b. Govind Salunke for the Respondent Nos.3
and 4.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : APRIL 08, 2021.**

P.C.

1. The Petitioner herein has challenged the Orders dated 30.06.2017, 04.01.2018 and 01.02.2019 passed by the learned Civil Judge, Junior Division, Miraj, in Regular Civil Suit No.227 of 2006.

2. By impugned order dated 30.06.2017, the trial Court has dismissed the application filed by the Petitioner-Plaintiff to direct Respondent No.4 to produce documents viz. Development

Agreement dated 18.01.2004, executed between Vijaysingh Patwardhan and Shrinivas Jaynarayan Bajaj, and the Power of Attorney dated 27.08.2009 by Vijaysingh Patwardhan in favour of Bajaj. By order dated 04.01.2018, the learned Trial Judge dismissed the application filed by the Plaintiff to adduce secondary evidence, in respect of the aforesaid documents. By impugned order dated 01.02.2019 the trial Judge has dismissed the another application filed by the Petitioner-Plaintiff for adducing secondary evidence in respect of the same documents.

3. The Petitioner and the Respondents shall be hereinafter referred to as the Plaintiff and Defendants.

4. Brief facts necessary to decide this Petition are as under;
The Plaintiff claims to be the owner of four properties surveyed under Survey Nos. 6, 7, 181 and 182 of Village Miraj. The said property shall be hereinafter referred to as the suit property. According to the Plaintiff the suit properties which were initially owned by Madhavrao Patwardhan, have been bequeathed to him by Will dated 7.3.2002. Initially Plaintiff filed a suit for injunction simplicitor alleging that the Defendant Nos.1 to 3 are interfering

with his possession on the basis of false and wrong survey entries. The Plaintiff subsequently amended the plaint and impleaded Defendant No.4 as a party to the suit and challenged the Development Agreement dated 18.08.2006 executed by the Defendant Nos.1 to 3 in favour of the Defendant No.4.

5. The Defendants put in their appearance and filed their written statements wherein they denied the title and possession of the Plaintiff in respect of the suit property. The Defendant Nos.1 to 3 claim to be in possession of the suit property. The Defendant No.4 has averred that the Plaintiff had filed a suit (RCS No.40 of 2004) against Vijaysingh Patwardhan, son of late Madhavrao Patwardhan on the basis of the Will dated 7.3.2002. The said suit was allowed to be withdrawn in view of the pursis filed by the Plaintiff wherein he had stated that he had claimed right to the property on the basis of the Will dated 7.3.2002, and after going through the documents he was convinced that said Vijaysingh has absolute ownership and possession of the properties. The Plaintiff had stated that he was convinced of the futility of the claim based on the registered Will dated 7.3.2002 of Shrimant Madhavrao C. Patwardhan. The Defendant No.4 claimed that the Plaintiff has no title, right or

interest in the suit property. The Defendant No.4 also raised the issue of limitation in challenging the Development Agreement dated 18.08.2016.

6. Based on the pleadings of the respective parties, issues were framed and the evidence had commenced. The evidence of the Plaintiff had commenced on 07.07.2010 with filing of affidavit of evidence, and was concluded on 04.03.2013. The evidence of witnesses was recorded on 11.09.2013. The records reveal that after examining the second witness, the plaintiff filed an application alleging that Vijaysingh Patwardhan has filed a suit before Sangli Court claiming right to the property of his father Madhavrao Patwardhan. The Plaintiff therefore sought to implead Vijay Patwardhan and Shrinivas Bajaj as Defendant nos.5 and 6. The learned trial Judge held that Vijay Patwardhan and Shrinivas Bajaj were not necessary parties. While dismissing the said application observed that the Plaintiff has been filing such applications only with an object of delaying the matter.

7. The Plaintiff thereafter filled application dated 30.06.2017 (Exhibit 148) for production of the documents i.e. Development

Agreement and Power of Attorney executed between Vijay Patwardhan and Shriniwas Bajaj, and sought to direct the Defendant No.4 to produce the said original documents. The learned trial Judge observed that the Plaintiff had not shown relevancy of the documents to decide the issue. The learned Judge also observed that the defendant No.4 has denied that he is in possession of the said documents and hence dismissed the application by the impugned order dated 30.06.2017.

8. The Petitioner thereafter filed an application dated 30.06.2017 (Exhibit 149) seeking leave to produce secondary evidence in respect of the said document viz. Development Agreement and Power of Attorney between Patwardhan and Bajaj. The learned trial Judge once again reiterated that the Plaintiff has failed to establish the relevancy of the said documents and therefore held that it was not necessary to grant permission to lead secondary evidence in respect of the documents which were not relevant.

9. Even after the prayer for production of the said two documents and/or prayer to lead secondary evidence in respect of those two documents was rejected by the trial court on 30.6.2017

and 04.01.2018, the Plaintiff once again filed an application dated 01.02.2019 seeking leave to produce secondary evidence in respect of the same documents. This application came to be dismissed by the impugned order dated 1.2.2019 once again on the ground that the Plaintiff has failed to show relevancy of this document to decide the issue. The learned trial Judge observed that the attempt of the Plaintiff is nothing but to delay the proceedings. The trial Court has observed that despite order to adduce further evidence, the Plaintiff is avoiding to lead evidence by seeking frequent adjournments. The trial Court has also taken note of the fact that the matter is pending for over 10 years and that the Plaintiff is not taking any steps to proceed with the matter even though his evidence was earlier closed and thereafter opportunity was given to him to lead further evidence. Taking note of the conduct of the Plaintiff, the trial Court held that the Plaintiff is not interested in adducing further evidence and therefore closed the evidence of the Plaintiff.

10. The impugned orders are challenged mainly on the ground that the documents are relevant to prove the title of the Plaintiff and are relevant to decide the issue involved in the suit. As stated

earlier, the Plaintiff claims right to the suit property by virtue of the Will dated 07.03.2002 allegedly of Madhavrao Patwardhan. The Plaintiff having failed in his endeavor to implead Vijaysingh and Bajaj as parties to the suit, has filed application to rely upon development agreement and Power of Attorney executed by Vijaysingh Patwardhan in favour of Bajaj. The Plaintiff has not been able to show relevancy of these documents to decide the issues involved in the suit. Suffice it to say that the Court cannot order production of irrelevant documents or documents not relevant for adjudication of the issue. Reference in this regard can be made to the decision of the learned Single Judge of this Court in ***Rajendra Singh Chaatrasal Singh Kushwaha vs. Jitendrasingh Rajendra Singh Kushwaha 2013 (6) Mh.L.J. 802***, wherein this Court has reiterated that Court cannot permit the party to lead an irrelevant evidence or evidence not related to the issue even in affidavit filed by way of examination-in-chief in lieu of oral evidence. The trial Court was therefore perfectly justified in rejecting the application for production of the said two documents executed by Vijay Singh in favour of Bajaj.

11. It is seen that application at Exhibit 227 for adducing

secondary evidence in respect of the said two documents was filed after rejection of the previous application for production of the said documents. Even after rejection of this application, by order dated 4.1.2017 the Plaintiff filed yet another application Exhibit 174 for adducing secondary evidence in respect of the same two documents. Both these applications were totally misconceived and rightly rejected by the trial Court.

12. The records reveal that the suit was filed in the year 2006. The Plaintiff has been delaying trial of the suit by filing application one after another. The conduct of the Plaintiff clearly establishes that he has no intention to proceed with the suit. The intention appears to be to drag the suit endlessly by adopting dilatory tactics. As it has been observed by the Apex Court in ***Lal Devi & Anr. V/s. Vaneeta Jain & Ors. (Appeal (Civil) No. 2494 of 2007)***, in such situation the courts are not helpless and have abundant powers to deal with such situation. This is precisely the course adopted by the trial Court. In view of dilatory tactics adopted by the Plaintiff, the trial Court which was left with no option, exercised the powers to close the evidence of the Plaintiff. The order of the trial Court was intended to curb the mischief of unscrupulous Plaintiff

adopting dilatory tactics and delaying disposal of the suit and thus causing hardship and inconvenience to the Defendant.

13. The impugned orders therefore do not warrant interference. Hence the Petitions are dismissed. It is stated that the matter is now fixed for final arguments. The trial Court is directed to proceed with the matter and dispose of the matter as expeditiously as possible without granting any adjournment on any ground whatsoever.

(ANUJA PRABHUDESSAI, J.)