

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1488 OF 2022

AKASH BABASAHEB KATALE
VERSUS
NIVRATI LIMBAJI KATALE AND OTHERS

...
Advocate for Petitioner : Mr. N. P. Jamalpurkar Patil
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 23-02-2022

PER COURT :-

1. The petitioner is aggrieved by the Order passed by the learned 5th Joint Civil Judge, Senior Division, Latur, below Exhibit-227 in Regular Civil Suit No. 227 of 2012, whereby, the Application filed by the petitioner-plaintiff seeking permission to adduce evidence of two more witnesses is rejected.

2. The suit is filed by the plaintiff for declaration of sale deed executed by defendant no. 1 in favour of defendants no. 3 and 4 as null and void and for perpetual injunction. The plaintiff is owner and possessor of the suit property, which was purchased by him in the year 2004 by way of a registered sale deed. The plaintiff is in actual and physical possession of the suit property since 2004.

3. According to the plaintiff, the defendants, in collusion with the concerned authority, have shown delivery panchnama in other Darkhast with intention to grab the suit property. The plaintiff's case is that, Regular Darkhast No. 59 of 2001 is in respect of the suit property while the concerned bailiff has shown the panchnama of delivery of possession of suit property in Regular Darkhast No. 59 of 2004. Said Darkhast has no concern with the present suit property. Thereafter, the defendants got executed the sale deed in spite of interim order and pendency of the suit. Plaintiff, thereafter, filed Special Civil Suit No. 108 of 2008, which was later on clubbed with Regular Civil Suit No. 798 of 2004. Special Civil Suit No. 108 of 2008 was, thereafter, converted and numbered as Regular Civil Suit No. 227 of 2012.

The application (Exhibit-227) is rejected by the trial Court observing that, perusal of the record shows that there is some mistake in R.D. Number while preparing panchnama of delivery of possession. On perusal of the relevant documents, it is very clear that the possession of 88 R. land out of Gat No. 72 admeasuring 1 H. 32 R. of village Kolpa was given to defendant No.1 and others. The objection in respect of Regular Darkhast No. 59 of 2001 and Regular Darkhast No. 59 of 2004 has been raised by the plaintiff at various stages, which were rejected. The trial Court, therefore, came to the conclusion that there is no need to examine bailiff.

4. It is a matter of record that the possession panchnama was prepared by the Revenue authority and not by concerned Bailiff. Sufficient opportunity to lead evidence was given to the plaintiff and the plaintiff has closed his evidence in the year 2010. The matter was fixed for final argument. In this view of the matter, the trial Court was justified in rejecting Application (Exhibit-227) filed by the petitioner. There is no illegality or perversity in the order impugned in the present petition.

5. The Writ Petition, being devoid of merit, is dismissed.

(NITIN B. SURYAWANSHI)
JUDGE

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