

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3226 OF 2021

SARJEO DASHRATH WAGHMODE
VERSUS
DATTU SARJERAO WAGHMODE AND OTHERS

...

Advocate for Petitioner : Mr. A.P. Bhandari
Advocate for Respondents No. 3, 4, 13 and 14: Mr. Rahul Karpe

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 19th JULY, 2022

ORDER :

1. The challenge in this petition is to the order passed by the learned Civil Judge, Senior Division, Newasa, below Exhibit-56 and Exhibit-64 in Regular Civil Suit No. 667/2013.

2. The plaintiff/respondent No. 1 has filed the Suit for partition, separate possession and a declaration that the sale deeds dated 01.08.1988 be declared sham, bogus and not binding on the share of the plaintiff, wherein the petitioner and other respondents are the defendants. The petitioner being original defendant No. 2 and defendant No. 3 filed their detail written statement.

3. The plaintiff filed application Exhibit- 48 under section 73 of the Indian Evidence Act, seeking a relief that sale deeds dated 01.08.1988 and signatures and thumb impression of defendant No. 2 be forwarded to the Government finger print expert and report be called as to whether at the time of execution defendant No. 2 has put his signatures and thumb impression on the said documents. Defendant No. 1 and 2 gave no objection to said application stating that both the sale deeds dated 01.08.1988 are not admitted by defendant No. 2. At the time of execution of both the sale deeds defendant No. 2 was absent and he has not signed both the sale deeds and somebody else has signed in his place and he has no objection for forwarding both the documents to the handwriting expert.

4. This application is rejected by the Trial Court holding that after going through the written statement filed by defendant No. 2/petitioner, it appears that his pleading is silent regarding facts pleaded in the application and no such foundation is laid in his written statement nor he has specifically pleaded, that by impersonation the sale deeds got executed by the purchaser.

5. After rejection of this application filed by the original plaintiff, the petitioner filed application Exhibit-57 contending that he was not present at the time of execution of sale deeds dated 01.08.1988 and somebody else has signed the same. He is not executant of both the sale deeds. Therefore, he prayed that both the sale deeds dated 01.08.1988 and specimen of signature and thumb impression be forwarded to the Government finger print expert.

6. This application is rejected by the Trial Court observing that the application Exhibit-48 was filed by plaintiff for sending sale deeds dated 01.08.1988 for the opinion of handwriting expert, which is already decided by the Court. Similar application is filed by the defendant and there cannot be second turn for deciding said application. The application being not tenable, the Trial Court rejected the same.

7. The petitioner/defendant No. 2 filed review application which is also rejected on merits by imposing cost of Rs. 1,000/- on the petitioner/defendant No. 2. Hence, the present petition.

8. Heard the learned advocate for the petitioner and learned advocate for respondents No. 3, 4, 13 and 14.

9. Perusal of written statement filed by petitioner/defendant No. 2 shows that there is no whisper made about fraud being played and/or sale deeds dated 01.08.1988 have been executed by impersonation and that the petitioner was not at all present at the time of execution of both the sale deeds. On the contrary, it appears from the tenor of averments made in the written statement that the execution of both the sale deeds is admitted.

10. First application Exhibit-48 filed by son of the petitioner, who is original plaintiff, is rejected by the Trial Court by a reasoned order. It is held that that, in absence of averments made in the plaint, the application cannot be entertained.

11. After rejection of application filed by the original plaintiff/son of the petitioner, the petitioner filed application making a statement that fraud is played by executing both the sale deeds dated 01.08.1988. Admittedly, averments made and/or pleadings in this application Exhibit-57 are for the first time

made before the Trial Court which are absent in the written statement filed by the petitioner in the Trial Court. In that view of the matter, the Trial Court was justified in rejecting application Exhibit-57 by holding that similar prayer though made by the plaintiff at that time has been rejected by the Trial Court by giving reasons. In absence of averments in the written statement that fraud has been played and the sale deeds were executed by impersonation, the Trial Court was right in rejecting application Exhibit-57.

12. Review application filed by the petitioner is also rejected by a detail order by giving proper reasons. The Trial Court has observed that '*neither the plaintiff nor defendant No. 2 has sought any declaration that sale deeds bearing Nos. 3031/1988 or 3032/1988 are illegal, void, sham or bogus. The only prayer made by the plaintiff is for the declaration that the sale deeds dated 01.08.1988 are not binding on his share*'.

13. The Trial Court has rightly recorded a finding that in such circumstances there is no need to send sale deed bearing No. 3031/1988 to the finger print expert for comparison of signatures with the admitted signatures. The Trial Court has

properly appreciated the contentions of both the sides and has rightly interpreted the citations relied on by both the sides. The petitioner has not made out any case to warrant interference in the extra ordinary writ jurisdiction. The writ petition being devoid of merits, is dismissed.

[NITIN B. SURYAWANSHI, J.]