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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13972 OF 2018

Dattatrya Nivrutirao Deshmukh

PETITIONER

VERSUS

Sharad Uttamrao Deshmukh and Another

RESPONDENTS

.....

Mr. Shailendra S. Gangakhedkar, Advocate for the petitioner

Mr. Vikram S. Kadam, Advocate for respondent No.1

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 3rd MARCH, 2022

ORDER :

1. The petitioner is aggrieved by the order passed by the Co-operative Court, Nanded thereby rejecting the application filed by the petitioner for calling original record in respect of plot No. 31 from respondent No.2 society.
2. Respondent No.1 / the Disputant filed Dispute bearing C.C.N. No. 26 of 2011 against respondent No.2 Society being opponent No.1 and the petitioner being opponent No.2 seeking a relief of declaration that resolution No.4 dated 11th February, 2008, plot allotment certificate, conveyance deed registered by the society in favour of the present petitioner in respect of plot No. 31 out of CTS No. 8411 situated in the society are null and

void, false, fabricated documents and cancellation of the same and further a decree of perpetual injunction restraining the society and the petitioner from causing any type of obstruction and interference in the peaceful possession, use and enjoyment of respondent No. 1 / Disputant.

3. The petitioner, during the pendency of the dispute, initially filed application Exhibit-86 praying for calling the documents i.e. agreement to sale executed by the father of respondent No.1, application given by respondent No.1 in favour of the petitioner, original receipt towards payment of fees on 23rd July, 1983, original letter issued by the society to the father of respondent No.1 for making payment on 13th July, 1983, the application given to the society, copy of original letter dated 1st March, 2000 issued by the Society to respondent No.1, payment of receipt issued by the society. The petitioner prayed that all these original documents are with the society and those be called from the society. Said application was rejected by the Co-operative Court holding that at the time of recording evidence of the society, or in his evidence, the petitioner can call these documents. Said order was unsuccessfully challenged by the petitioner in revision.

4. Thereafter, again, the petitioner filed application Exhibit-102 for calling original record of plot No. 31 from the society.

The Co-operative Court, in view of the earlier orders passed below Exhibit-86, rejected the application Exhibit-102 by granting liberty to the petitioner to apply for witness summons for production of said documents. The petitioner challenged the order passed by the Co-operative Court, by filing Revision No. 47 of 2012 in the Co-operative Appellate Court. The revision came to be dismissed. Hence, the present writ petition.

5. Heard rival submissions of learned advocate for the petitioner and learned advocate for respondent No.1. None appears for Respondent No. 2 – society, though served.

6. It is not in dispute that the earlier prayer made by the petitioner to call for the record from the society is rejected by the Cooperative Court vide order passed below Exhibit-86. The revision filed by the petitioner challenging the said order is dismissed. The petitioner is seeking to call the documents namely, agreement to sale executed by deceased father of respondent No.1 in favour of the petitioner, application given by the petitioner to the society, letter dated 1st March, 2000 issued by the society to the father of respondent No.1, payment receipt dated 23rd July, 1983 issued by the society to the deceased father of respondent No.1 and the letter issued by the society to

the deceased father of respondent No.1 to make payment, from respondent No.1 society.

7. There is nothing on record to show that these documents are in the custody of the society. Even the agreement, which is executed in favour of the petitioner by the deceased father of the disputant / respondent No. 1 is sought to be called by the petitioner. The trial court as well as the revisional court were justified in rejecting the applications filed by the petitioner in the peculiar facts and circumstances of the case. While rejecting the application Exhibit-102, the Co-operative Court has granted liberty to the petitioner to apply for issuance of witness summons and call record of the society. In that view of the matter, no illegality or perversity is found in the orders impugned in the present writ petition. The writ petition, being devoid of merits, is dismissed. Interim relief stands vacated.

[NITIN B. SURYAWANSHI]
JUDGE