

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.13436 OF 2021

DR.SHAIKH SADEK PATEL

VERSUS

RAM MANDIR (MATH) BALAJI THROUGH ITS SECRETARY SHRI
UTTAMRAO DAULATRAO MANSUITE AND ANOTHER

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Advocate for the Petitioner : Shri Muthiyan Namit S.

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CORAM: SMT. BHARATI H. DANGRE, J.

DATE :- 13th January, 2022

Per Court:

1. Heard the learned counsel for the petitioner, who is the original defendant No.2 in RCS No.1147/2004 instituted by respondent No.1/ plaintiff, seeking the relief of injunction claiming to be the owner and in possession of the suit property.

2. The claim revolved around the suit property described as CTS No.11990 admeasuring 1232.5 square meters situated at Kiradpura, Aurangabad with the boundaries set out in the claim clause of the plaint in the suit. In paragraph 2 of the plaint, the plaintiff specifically pleaded that he is the owner and possessor of the suit property with the description set out therein. Perpetual injunction is sought against the defendants or anybody claiming on their behalf from causing any obstruction, interference, hindrance and nuisance in the in the peaceful

possession of the plaintiff over the suit property.

3. On appearance, the petitioner/ defendant No.2 filed his Written Statement and raised an objection to the tenability of the suit in absence of authorization under the Bombay Public Trusts Act. As far as the claim of the plaintiff about the property being owned and possessed, it is specifically pleaded that the land records i.e. Sanad or PR card or enquiry register, are not the documents of the title and CTS number of the plaintiff is 11990. The contention about the defendant No.2 attempting to encroach upon the property of the plaintiff, is specifically denied.

4. The application vide Exhibit-114 was taken out by defendant No.2, for calling the documents from the Sub Registrar's office by invoking order 16 Rule 6 of the Code of Civil Procedure and the witness summons were sought to be issued to the Sub Registrar, Aurangabad and it was prayed that he shall be directed to produce the sale deeds in original before the Court, to which, the reference has been made in the said application.

Considering that the suit is for simplicitor injunction and the sale deeds which defendant No.2 intended to bring on record, were necessary for the effective adjudication of the claim in the plaint and since the original sale deeds are not in the custody of defendant No.2, the application was allowed vide order dated 09.10.2014. The Sub-Registrar, Aurangabad responded to the summons and produced on record the

original sale deeds.

5. Now, defendant No.2 realized that he had supplied wrong numbers and therefore, he took out another application vide exhibit-123 where, he alleged that after inspection and verification of the sale deeds produced by the Sub-Registrar, it is revealed that the sale deed book No.150 dated 04.01.1991 and sale deed book No.4835 are wrongly called, instead, sale deed book No.160 dated 04.01.1991 and sale deed book No.4865 dated 29.09.1982, ought to have been called for.

The application being filed on 30.01.2015, was opposed by the plaintiff and it was kept pending till the evidence in the suit was over. The application was, thereafter, argued before the learned Judge along with the application filed vide exhibit-153 for exhibiting certain public documents brought on record. On 30.09.2021, the application vide exhibit-123 is rejected by the learned Judge by recording that defendant No.2 was not diligent in taking out the said application, since on an earlier occasion, wrong numbers were quoted, which prompted the Sub Registrar to bring the sale deeds on record, which defendant No.2 claims to be incorrect. Evidence of defendant No.2 was closed on 01.12.2018 and since then, the matter was pending for final argument. Recording that if at this stage the application is allowed, it would be amounting to reopening of the trial, since the sale deeds not being public documents, cannot be exhibited automatically, but the witnesses will have to be recalled for the

said documents being exhibited and further recording that the said suit is pending for more than 15 years, the application is rejected.

6. It is trite position of law that the party, who either files the proceedings or defends the proceedings, is expected to be diligent in prosecuting his rights and if he commits mistake or falter, he has to take consequences. Here is the case where, defendant No.2 took the application for issuance of witness summons to the Sub Registrar, which came to be granted, but he then turned around and stated that correct numbers were not given and therefore, incorrect documents are brought on record and correct documents are necessary for effective adjudication and therefore, again sought presence of the Sub Registrar to bring the correct documents. During the entire process/ exercise, the period of six years is lapsed and the suit has reached at the stage of final argument, evidence being closed in the year 2018 itself. Due diligence and time bound exercise of rights is an essence of availing the remedy under law and in the absence of defendant No.2 exercising either of them, his application did not deserve any indulgence and is, therefore, rightly rejected by the learned Judge. I see no reason to interfere in the impugned order. In the result, this Writ Petition is dismissed upholding the impugned order dated 30.09.2021. No order as to costs.