

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8546 OF 2023

Mohammad Faqharuddin Mohammad
Kareemuddin

.... Petitioner

Versus

Mohammad Fasuluddin Buranuddin
and others

.... Respondents

.....
Mr. M.K. Bhosale, Advocate h/f Mr. M.A Granthi, Advocate for
the Petitioner

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 02nd AUGUST, 2023

ORDER :

1. Order passed by 5th Joint Civil Judge, Junior Division, Parbhani, below Exhibit-25 in Regular Civil Suit No.115 of 2022 is challenged in the present petition.

2. The petitioner/third party filed application under Order I Rule 10 of the Code of Civil Procedure in the suit filed by respondent No.1/plaintiff for declaration of ownership of land Gut No.582/C, admeasuring 4.5 Acres situated within the Municipal limits of Parbhani, against respondent Nos.2 and 3/defendants.

3. The petitioner filed application Exhibit-25 claiming that his grandfather, Ahmad Mohiuddin S/o. Fakroddin was the owner and possessor of the suit property, i.e. Gut No.582/C, admeasuring 3.37 Acres, and in the revenue record name of his grandfather was recorded. He claimed that by filing Civil Misc. Application No.215 of 2014, he obtained heirship certificate of his grandfather being the only legal heir in respect of the said property. He, therefore, filed application seeking impleadment as defendant in the suit as he has interest in the property in Gut No. 582/C. The application is rejected by the Trial Court holding that the petitioner has *prima facie* failed to show his right is involved in the suit property. The petitioner filed document in the Trial Court in the form of *Khasra Patrak*, which does not bear the petitioner's name. Thus, the Trial Court has held that the petitioner has failed to show that he has any interest in the suit property and rejected the application.

4. Heard the learned advocate for the petitioner. Perused the writ petition memo, annexures thereto and the impugned order.

5. The petitioner has failed to produce any document in support of his claim that he is the owner and possessor of the suit property as legal heir of his grandfather. It is necessary to mention here that the suit property is Gut No.582/C, admeasuring 4.5 *Acres*, whereas the property, which the petitioner claims to be owner and possessor is 582/C, admeasuring 3.37 *Acres*. It is the contention of the petitioner that Gut No.582 was divided into 582/A, 582/B, 582/C, 582/D.

6. Be that as it may, since the petitioner has failed to prove his ownership and possession over the suit property, the Trial Court is justified in rejecting the application filed by the petitioner. Even if, any decree is passed in the suit filed by respondent No.1, since the petitioner is not party to the same, it will not be binding on the petitioner. No merit is found the petition. The writ petition is therefore dismissed.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane