

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11907 OF 2023

Shankar S/o Anna Jadhav Petitioner

Versus

Sainath S/o Dagdu Jadhav Respondent

.....

Mr. A.R. Kawade, Advocate for Petitioner

Mr. Anand P.Bhandari, Advocate for Respondent

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 26th September , 2023

ORDER :

1. This petition filed under Article 227 of the Constitution of India challenges order passed by learned Civil Judge, Junior Division, Khultabad, below Exhibits-74 and 75 in Regular Civil Suit No. 130015 of 2012.

2. Petitioner/plaintiff has filed suit for specific performance of agreement dated 06/09/2003 and perpetual injunction. Respondent/Defendant has denied execution of said agreement by filing written statement. On the basis of written statement, Trial Court has framed 11 issues. Parties led their respective evidence. Thereafter, issue of limitation was framed, and parties were permitted to lead evidence on that issue. At this stage, application Exhibit-74 is filed by petitioner/plaintiff seeking permission to lead

additional evidence. By filing application Exhibit-75, petitioner/plaintiff prayed for permission to lead secondary evidence. Both these applications are rejected. Hence, the present petition.

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

4. Indisputably, suit of plaintiff is based on agreement dated 06/09/2003, original of which was filed in the present suit. Thereafter, since defendant filed Regular Civil Suit No.29 of 2013, for injunction against plaintiff in respect of same suit property, plaintiff sought return of original agreement for presentation in that suit. Said permission was granted, and plaintiff filed original agreement in Regular Civil Suit No.29 of 2013.

5. During the course of argument, it is informed that the said suit is partly decreed, and appeal filed by defendant challenging the said decision is pending.

6. It appears from record that original agreement dated 06/09/2003 was impounded by order passed in Regular Civil Suit No.29 of 2013. Since specific performance of agreement dated 06/09/2003 is prayed by plaintiff in the present suit, the

said agreement is required to be brought on record for effective adjudication of the suit. As original agreement was filed in Regular Civil Suit No.29 of 2013, plaintiff prayed for issuance of witness summons to the attesting witness to the said agreement. Trial Court has erred in rejecting said application observing that, *"both the parties have closed their evidence and matter is kept of final argument. Thereafter, issue of limitation was framed and now, the matter is kept for leading evidence on the issue of limitation only. At this stage, petitioner/plaintiff has moved application for leading additional evidence, so also for permission to lead secondary evidence, which is required to be rejected. As the suit is of 15 years old, and if the application is allowed, then there is possibility of second round of trial, which would cause injustice."*

7. By citing same reasons, application Exhibit-75 is also rejected.

8. By rejecting applications Exhibits 74 and 75, Trial Court has denied fair opportunity to plaintiff to lead best possible evidence in support of his case. Admittedly, original agreement dated 06/09/2003 is impounded in Regular Civil Suit No.29 of 2003, and certified copy of the same is filed in the present suit. Approach of Trial Court in rejecting both

applications is too technical and unreasonable. Parties are to lead evidence on the issue of limitation. No prejudice would be caused to defendant, if plaintiff is permitted to lead additional evidence, and secondary evidence in respect of said agreement. Though applications are filed belatedly, the defendant can be suitably compensated.

9. For the reasons stated above, writ petition is allowed.

10. Impugned orders dated 16/08/2022 passed by the learned Civil Judge, Junior Division, Khultabad, below Exhibits-74 and 75 in Regular Civil Suit No.130015 of 2012, are hereby quashed and set aside.

11. Applications Exhibits 74 and 75 are allowed subject to petitioner/plaintiff paying costs of Rs.25,000/- to respondent/defendant in the Trial Court.

12. Needless to state that denial on the part of defendant of execution of said agreement will be considered on its own merits by Trial Court, without being influenced by the observations made in this order.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane