

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

WRIT PETITION NO. 13302 OF 2023

Sujeet s/o Suhasrao Deshmukh

...Petitioner

Versus

1. The State of Maharashtra
Through Collector, Parbhani.

2. Industrial Training Institute
At Parbhani, Established as per the
Resolution of Director of Technical Education,
Through its Principal
Pravinkumar s/o Digambar Ukhalikar

...Respondents

...

Advocate for Petitioner : Mr. Vishant P. Kadam

AGP for the Respondents/State : Mr. B. V. Virdhe

...

CORAM : SHAILESH P. BRAHME, J.

DATE : 9th NOVEMBER 2023

PER COURT :

. Heard the learned Counsel for the petitioner.

1. This writ petition is directed against the rejection of the application at Exhibit-42 of the petitioner/plaintiff for recasting the issues in Regular Civil Suit No.272/2021. The petitioner is the plaintiff who has filed RCS No.272/2021 for declaration and injunction. The respondents/defendants filed written statement. The controversy about the ownership of the

suit plots. Issues are settled at Exhibit-41 which is at page no.52.

2. The petitioner is aggrieved by framing of the issues because according to him, the burden is erroneously cast upon the petitioner instead of the respondents. Hence application at Exhibit-42 was made for recasting. The respondents opposed it. It was rejected by the impugned order dated 05.08.2023.

3. The learned Counsel submits that the paragraph no.15 of the written statement shows a rival claim of the respondent no.2 and therefore the burden lies upon it. He also refers to letter dated 05.07.2017 showing falsity of the claim of the respondents. I do not find, it necessary to deal with the submission of the learned Counsel for the petitioner regarding purport for making application at Exhibit-25 and 27 and inter-dependency of their decisions. The merits of those applications need not be dealt with presently.

4. I have gone through the plaint and the prayers therein as well as written statement. Though there is a rival claim of the respondent no.2 stated in paragraph no.15 that does not absolve the petitioner/plaintiff from discharging the burden cast upon him. The issues are rightly settled by the learned

Judge. The petitioner is asserting his right over the suit land and hence he has to discharge the burden.

5. The learned Judge has aptly considered the legal position in the light of the facts in issue. The findings recorded in paragraph nos.6 to 8 are based on material on record and in consonance with provision of law. I do not find any perversity or any patent illegality to upset the impugned order.

6. The writ petition is dismissed.

[SHAILESH P. BRAHME, J.]