



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

928 WRIT PETITION NO. 3741 OF 2024

**VIJAYKUMAR ALIAS TUKARAM NARAYAN
GHOGARE
VERSUS
DNYANESHWAR NARAYAN GHOGARE AND
ANOTHER**

...
Advocate for the petitioner : Adv.G.D.Kale

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CORAM : ARUN R. PEDNEKER, J.

DATE : 10.04.2024

P.C. :

1] The petitioner challenges the order dated 09.02.2024 passed by the Jt.Civil Judge Senior Division, Udgir below Exh.96 in Special Civil Suit No.92/2021 with the order below Exh.95 dated 30.01.2024 and order below Exh.91 dated 27.11.2023. The application is filed by the petitioners below Exh.96 seeking permission to issue witness summons to Deputy Superintendent, TILR, Udgir. The prayer of the said application is as under :

तरी विनती कि,

मे साहेबानी अर्ज मंजूर करुन मा उप अधीक्षक साहेब,
भूमिअभिलेख कार्यालय उदगीर यांना मौ हेर गावाचे गाव
नकाशासह सवि देण्यास समन्स काढण्याची कृपा करावी

2] It is the contention of the learned counsel for the petitioner that the railway line is passing through the suit land bearing Gat No.209/1 situated at village Her, Taluka Udgir, District Latur and that the petitioner filed an application seeking permission to issue witness summons to the Deputy Superintendent of Land Records showing that the railway line is passing through the suit land bearing Gat No.209/1. The trial Court, by order dated 09.02.2024 at para no.5 has observed as under :

5. I have perused records. Suit is for partition and separate possession in respect of Land Gat No.209/1, land Gat No.209/2, land Gat No.210/2, land Gat No.325/1, land Gat No.3/2 all situated at village Her, Tq. Udgir and House G.P.No.339, 388, 1003. Plaintiff and defendant nos. 3 to 5 are children of defendant nos. 1 and 2. Defendant no.3 has examined himself as D.W.1 vide Exh.49 and cross-examination was completed on 15.01.2020, thereafter he has examined almost five witnesses on his behalf and the cross-examination of his last witness D.W.no.5 vide Exh.66 was completed on 08.02.2022. It appears thereafter he has taken many dates for leading further evidence and filed interlocutory application i.e. injunction application vide Exh.85. The said application was decided on merit on 27.10.2023. It is pertinent to note that plaintiff has filed 7/12 Extract of Gat no.209/1 on record vide list Exh.4. It appears that there is no

description in respect of contention of Railway department in the 7/12 Extract of Gat no.209/1. It is important to note that defendant no.3 has not filed any single document to support his version. Hence, the application is nothing but to prolong the suit. Already earlier two applications have been rejected on same ground against defendant no.3 has filed present application on similar reasons, therefore no merits in the application and application deserves to be rejected with costs for prolonging suit. With these reasoning I proceed to pass following order.

3] The trial Court has held that the application is nothing but to prolong the suit and that various opportunities were granted to the defendants to lead evidence and that five witnesses are already examined and cross examined and cross examination of the last witness was also completed. The trial Court has also observed that 7/12 extract of Gat No.209/1 which is at page no.34 of the petition, there is no indication of railway line passing through Gat No.209/1. Perusal of the document at page 34, also does not indicate that the railway line is passing through Gat No.209/1 and the petitioner is not able to demonstrate from the said document that the railway line is passing through the Gat No.209/1. In view of the same, I do not see any reason to interfere with the impugned order

passed by the trial Court. Hence, the present Writ Petition is dismissed.

4] In the fact situation, the cost of Rs.5000/- is reduced to Rs.2000/-.

[ARUN R. PEDNEKER]
JUDGE

DDC