



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5446 OF 2024

Deepak Kailas Patil

VERSUS

Anna Gulab Kamble And Others

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Mr. M. S. Deshmukh a/w Mr. U. B. Gite, Advocates for
the Petitioner

Mr. Y. A. Jadhav, Advocate for Respondent No. 1

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CORAM : R.M. JOSHI, J

DATE : JUNE 13, 2024

PER COURT :

1. By consent of the both sides, heard finally at
the admission stage.

2. The facts as they reveal from the record are
peculiar in nature. The Respondent has filed suit
bearing Special C. S No. 13/2023 for partition and
cancellation of sale deeds executed by the father of
the Plaintiff. It is the contention of the Plaintiff
that his father without any authority executed
registered sale deed dated 16.01.2006 in favour of
Defendant No. 5 – Om Sainath Baba @ Om Shri Sainath. It
is further case of the Plaintiff that the Petitioner
i.e., Defendant No. 6 has purportedly purchased the

portion of the suit property by entering into the sale transaction with Defendant No. 5.

3. Learned trial Court took up application Exh. 5 for hearing on the basis of pursis filed by the Plaintiff that no relief is sought against Defendant No. 5. Though it is so, perusal of the order passed by the learned trial Court indicates that the entire findings are recorded against the Defendant No. 5 holding that he has failed to appear in the proceedings and the alleged inconsistencies in his signatures on the documents in question and these observations are made basis to pass order of injunction against Petitioner. From the entire order passed by the learned trial Court it does not appear that there is any other reason than the observations made against Defendant No. 5 is recorded to pass order of injunction.

4. A specific query is raised by this Court with the learned Counsel for Respondent No. 1/Plaintiff as to whether the Defendant No. 5 was served before the trial Court. Candid response to the same is in negative. It is pertinent to note that the Defendant

No. 5, who as per case of Plaintiff has allegedly executed registered sale deed in favour of Defendant No. 6, is not served before the trial Court and obviously his say is not obtained as to the factum of execution of the said document. Without any such plea of Defendant No. 5, learned trial Court has proceeded to record findings against him. This is wholly impermissible as it flouts the basic principles of natural justice. Learned District Court has also failed to take into consideration the said vital and important aspect that no findings could have been recorded by the learned trial Court against Defendant No. 5 for passing injunction against Defendant No.6 without hearing Defendant No. 5.

5. It would be altogether different situation if the Defendant No. 5 is served as per procedure laid down by law and he remains absent before Court. In such circumstances, the Court may be justified to draw adverse inference of his absence and to record appropriate findings supported by other material placed on record. As such, in considered view of this Court the order passed by the learned trial Court and

confirmed by the learned District Court is not sustainable for want of service of suit summons on Defendant No. 5.

6. In the result, impugned orders dated 08.05.2024 and 23.01.2024 cannot be sustained and hence, are set aside to the extent of present Petitioner.

7. Needless to record that after service of suit summons on Defendant No. 5, it would be open for the learned trial Court to entertain any application filed by the parties for its decision as per law.

(R. M. JOSHI, J.)

Malani