



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1929 OF 2022

Iraba Marotrao Dhulshete

VERSUS

Shankar Gyanba Kanode And Others

...

Mr. M. P. Kale, Advocate for the Petitioner

Dr. S. G. Nandedkar, Advocate for Respondents

...

CORAM : R.M. JOSHI, J

DATE : JUNE 13, 2024

PER COURT :

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

2. This Petition takes exception to the rejection of the application Exh. 30 filed by the Plaintiff in RCS No. 92/2017 calling upon the trial Court to issue summons of the Sub-Registrar, Parbhani to produce disputed sale deeds nos. 1674/1977, 2013/1977 & 1718/1978 on record.

3. Petitioner is Plaintiff who has filed suit for declaration that the sale deeds recorded herein above are bogus and not binding on him. Defendants appeared and resisted the suit including the objection to the maintainability of the suit on the count of limitation.

4. The learned Trial Court framed issues and one of the issues casts burden upon the Plaintiff to prove disputed documents are bogus.

5. In the light of these pleadings and framing of the issues, application Exh. 30 came to be filed seeking direction to the Sub-Registrar, Parbhani to produce these original documents on record. Application was opposed by the Defendants contending that the issue of limitation has been raised and till the time the said issue has been decided, no application cannot be entertained.

6. Perusal of the order shows that the trial Court has not come to the conclusion that the documents sought to be produced by the Plaintiff on witness summons to the Sub-Registrar are irrelevant documents. In any case, having regard to the fact that the suit is filed for declaration that the sale deeds in question are bogus and not binding upon him, the documents are absolutely relevant. Learned trial Court has also observed that the Plaintiff may apply for the certified copy of the said record before concerned Authority. A solemn statement is made by the learned Counsel for the

Plaintiff that the certified copies of these sale deeds are already placed on record before the trial Court and said fact has not been considered by the Court.

7. When Plaintiff has come out with a specific case that sale deeds are bogus and not binding upon him and since the burden is cast upon him to prove the said fact, the Plaintiff is absolutely justified in filing application for issuance of witness summons to the Sub-Registrar, Parbhani who is having original documents in his custody. Unless summons is issued, the Court would not come to know the status of said documents. Any observation made by Court on the basis of age of documents would not be justified. Thus, there was no reason or justification for the learned trial Court to reject said application. The impugned order, therefore, cannot sustain.

8. In view of the above discussion, impugned order dated 16.09.2021 passed below Exh. 30 is set aside. Application Exh. 30 stands allowed. The learned trial Court to issue witness summons to Sub-Registrar, Parbhani to produce before it original sale deeds nos. 1674/1977, 2013/1977 & 1718/1978.

9. Petition stands disposed of in the aforestated terms.

(R. M. JOSHI, J.)

Malani