



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

WRIT PETITION NO. 13970 OF 2023

KUSUM SATISH JAIKAR

VERSUS

**MUNICIPAL CORPORATION AURANGABAD THROUGH ITS COMMISSIONER
AND OTHERS**

Mr. N. S. Muthiyan, Advocate for the petitioner

Mr. A. P. Bhandari, Advocate for respondent Nos.1 and 2.

CORAM : R. M. JOSHI, J.

DATE : 24th JULY, 2024

PER COURT :-

1. Petitioner/plaintiff in R.C.S. No. 147/2010 (Old R.C.S. No. 863/2009) is aggrieved by rejection of application Exhibit 144 for issuance of summons to Sub-Registrar No.2, Collector Office, Aurangabad to produce index register/Day book of sale deed bearing No. 1533, dated 22/10/1982 before trial Court.

2. Plaintiff filed suit for injunction against the defendant claiming title in respect of the suit property on the basis of the register sale deed executed on 22/10/1982 by the predecessors of the defendant in favour of the predecessor of the plaintiff. Defendant appeared in the said suit and filed written statement. Counter claim is also filed for seeking cancellation of the sale deed. Plaintiff led his evidence. Defendant did not adduce evidence on counter claim, however, plaintiff examined himself in defence of counter claim. At this stage application is

filed vide Exhibit 144 for calling the index register/day book of sale deed in question. Learned Trial Court has rejected the application on solely ground that the plaintiff has failed to adduce evidence in spite of several chances and that this Court has directed the suit to be decided on top priority.

3. There is no dispute about the fact that the suit is filed for perpetual injunction but there is a counter claim filed by the defendant for seeking of the cancellation sale deed dated 22/10/1982. The initial burden would be on the plaintiff to prove and substantiate his case about the existence of the said sale deed. Thus, the document sought to be called on record by seeking issuance of witness summons cannot be said to be irrelevant for the decision of the suit. Even Trial Court has not rejected application on this ground. Having regard to the facts and circumstances of the case the application ought to have been allowed by the Trial Court. Hence, impugned order can not sustain.

4. Resultantly, petition stands allowed. Application Exhibit 144 is allowed. Trial Court to issue summons to Sub-Registrar-2, Collector Office, Aurangabad to produce index register/day book of sale deed bearing No. 1533, dated 22/10/1982. R.C.S. No. 147/2010 be decided expeditiously and in any case within a period of six months.

(R. M. JOSHI, J.)

ssp