



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

912 WRIT PETITION NO. 609 OF 2016

Shravan Bhujang Salve

....Petitioner

VERSUS

1. Upsampada Shailej Kirte
2. Siddodhan Shravan Salve
3. Mahendra Shravan Salve
4. Aruna Lahurao Acharya
5. Ashananda Satish Kamble
6. Shridevi Sudarshan Jogdand
7. Bhagyashree Amol Kamble

.....Respondents

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Mr. Sanket Shinde h/f. Ms. Ashwini Lomte, Advocate for the
Petitioner

Mr. G.L. Deshpande, Advocate for respondent No. 1

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CORAM : MANJUSHA DESHPANDE, J.

DATE : 19th MARCH, 2025

ORDER :

1. Petitioner is challenging the order dated 09.04.2015 passed by 3rd Joint Civil Judge, Junior Division, Latur, below Exhibit-67 in R.C.S. No. 25/2012, thereby application filed by petitioner for setting aside 'no further evidence' order was rejected.

2. It is the case of the petitioner that petitioner is original defendant in the suit filed by Respondent No. 1 bearing

R.C.S. No. 25/2012. Respondent No. 1 had filed suit for partition and separate possession claiming 1/8th share in the suit property. Petitioner appeared in the suit and filed written statement. In the written statement filed by the petitioner it is claimed that property in question is his self acquired property and not Hindu Joint Family property. According to the petitioner, he had purchased the suit property i.e. Gat No. 162, admeasuring 8 Acres 17 Ghunta, situated at village Bhosa, Tq. Latur, from one Shivaji Kisanrao Khose by registered sale deed on 24.03.1980 and partitioned land in favour of his wife Champabai to the extent of 1 Hectare 60 R. He has also sold land to the extent of 1 Hectare 21 R to one Shivram Balappa Chavan from his own share.

3. It is further contended in the written statement that he has also sold some part of the land for meeting medical expenses of his wife and after transfer of parts of land he is in possession of land only to the extent of 59 R, which is owned and possessed by him. During the pendency of the suit, in order to prove that he had his own income from which he had purchased the suit land, petitioner wanted to examine one witness namely Meheub Pathan, whose affidavit of examination

in chief is already on record. He wanted to examine him in order to prove Arabic documents which substantiate the defence of the petitioner that suit property is acquired by him from his own income. However, the witness of the petitioner could not remain present on the date fixed for his examination due to which order came to be passed by the Trial Court, by observing that respondent is absent and has not produced any evidence. In view of the observation, order of 'no evidence' has been passed on 19.01.2015. Thereafter, petitioner filed an application on 27.03.2015, with a prayer to set aside 'evidence close'. It was stated in the application that witness Meheebub Pathan is a teacher in the school, therefore, he could not remain present on given date. Therefore, order dated 19.01.2015 may be set aside. Plaintiff opposed the application and Trial Court has rejected the application by order dated 09.04.2015, which is impugned in the present petition.

4. Learned advocate for the petitioner submits that the suit is filed by plaintiff for partition and separate possession. Since it is his defence that the suit property is purchased by him from his own income as he was working in South Arabia country, he wanted to produce certain documents which would

substantiate his claim. In order to prove the documents which were in Arabic language, it is necessary for him to examine the witness knowing Arabic. The Trial Court while passing the has not taken into consideration the importance of witness and has observed that, *"the fact in issue is not that, whether defendant had any source of income to purchase the suit property. By adducing the evidence of witness Mahebub Pathan, defendant is willing to prove the translation of his identity card and foreign work permission issued by South Arabia Government. But his evidence will not be helpful to prove any fact in issue. It is the duty of the Court to check that, whether evidence which party is willing to adduce is relevant or not."* This according to learned advocate for the petitioner would cause great prejudice to the petitioner since his defence is based on the ground that he had independent income and from that income he has purchased the suit property, therefore, suit property is his self acquired property and not Joint Hindu Family property. He, therefore submits that writ petition deserves to be allowed by setting aside the impugned order.

5. Per contra, learned advocate for respondent No. 1 opposes the writ petition. According to him, there is no pleading

in the written statement that petitioner was working in Gulf country. Therefore, he cannot examine witness in support thereof. Therefore, according to him, the Trial Court had not committed any error in passing the order impugned, therefore, impugned order does not deserve any interference.

6. After hearing the parties and after perusing the impugned order, it is evident that respondent No. 1/original plaintiff has filed suit for partition and separate possession of the suit property, which according to plaintiff is joint Hindu Family property. As against that in the written statement it is the stand of the petitioner that he had purchased the suit property from his own income by way of registered sale deed. The property purchased is from his own income. Therefore, in order to prove that suit property has purchased by him from his own income, he had filed affidavit in examination in chief of witness namely Meheebub Pathan and only oral evidence was remained to be led. Since, the witness is school teacher, he could not remain present on the given date, which is apparent from the application filed by petitioner.

7. The Trial Court has not taken into consideration that the defence of the petitioner itself is that it his independent

property purchased by him from his own income as he was working in Gulf country, therefore, it is necessary for him to examine said witness to translate the documents in support of his stand. The Trial Court has recorded perverse finding by holding that, fact in issue is not that, whether defendant had any source of income to purchase the suit property. Though, claim of the plaintiff was that it is joint Hindu Family property, petitioner's defence in Written Statement was that he has purchased the property from his own income. Therefore, it was necessary for him to examine said witness.

8. If the opportunity is denied to the petitioner to prove documents which are necessary for proving that petitioner was working in Saudi Arabia, great prejudice would be caused to the petitioner and it would weaken his defence. The whole defence of the petitioner is based on the ground that the suit property is purchased by him and it is his self acquired property. If the impugned order is not set aside, it would amount to denial of opportunity to the petitioner to lead evidence and prove his defence. Hence, order dated 09.04.2015 passed by 3rd Joint Civil Judge, Junior Division, Latur, deserves to be quashed and set aside.

9. Writ Petition is allowed.
10. Order dated 09.04.2015 passed by 3rd Joint Civil Judge, Junior Division, Latur, below Exhibit-67 in R.C.S. No. 25/2012 is hereby quashed and set aside.
11. Application Exhibit-67 is allowed.

(MANJUSHA DESHPANDE, J.)