

ORDER BELOW EXHIBIT-77 IN R.C.S.No.577 of 2007

Defendant No.1 has filed the present application seeking permission to adduce the evidence prior to the plaintiff.

2. It is asserted that the suit is for declaration and perpetual injunction. Plaintiff has requested the court to declare that the Sale-deed dated 11.12.2007 is sham and bogus. It was executed by Girjabai Vishwanath Sankpal in favour of defendant No.1 in respect of land Gat No. 245 situated at Zaregaon. Name of Girjabai Vishwanath Sankpal was mutated in the revenue record vide mutation entry No.411 dated 24.12.1993. Said mutation entry was certified on 19.01.1994. Her name was mutated on the basis of the application dated 23.12.1993 filed by Vishwanath Bhiva Sankpal. He died on 02.02.1994. Plaintiff has fabricated false Grampanchayat record to show that Vishwanath Bhiva Sankpal has died 02.02.1993 in order to get the reliefs of declaration and perpetual injunction. He did so in collusion with the Gramsevak Zaregaon.

3. It is further asserted by him that he got the information under the Right to Information Act that Shri.U.M.Shaikh was the Talathi of village Zaregaon in the year 1993-94 and Shri. N.N.Waghmare was the Gramsevak of Grampanchayat Zaregaon. He received the copies of the application filed by Vishwanath Sankpal, notice issued to him and death register of Grampanchayat Zaregaon for the year 1993 under the Right to Information Act. It is further asserted by him that he met the said Talathi and Gramsevak. Talathi has told him that application was filed with him by Vishwanath Bhiva Sankpal and that he issued notice to him and further that its acknowledgement bears the thumb impression

of Vishawanath Bhiva Sankpal. Whereas, the then Gramsevak has told him that he has not inserted the date of death of Vishwanath Bhiva Sankpal as '05.03.1993' in the death register and that the entry in respect of his death in the death register is not in his handwriting. Both, the then Talathi and the Gramsevak, are age old persons. They are pensioners. Plaintiff is yet to begin his evidence. Defendant No.1 is having the apprehension that they both may not be available for deposing before the court till the time the plaintiff completes his side of evidence. In the circumstances, it is necessary to examine them before the plaintiff opens his evidence side. Hence, the application.

4. Plaintiff has filed the say and opposed the application contending that the application is false. He yet to begin his evidence. Ultimately, he has prayed for rejecting the application.

5. Perused the record and proceeding. It is seen that the plaintiff has not specifically denied the assertions of defendant No.1. He has objected the application by simply stating that the contents of the application are not true. It is not denied by him that the then Talathi and the Gramsevak are retired from their respective service and that they are senior citizens. Order XVIII Rule 1 of the Code of Civil Procedure prescribes that the plaintiff has right to begin. Defendant No.1 has filed the present application to clear the hurdle created by the said rule. Not only that he wants to examine those two witnesses before examining himself for the reasons which have been reproduced hereinbefore. It is relevant to note here that defendant No.1 has not only resisted the suit but also filed a counter claim for partition and separate possession. In the circumstances, Rule 3 of Order XVIII comes into picture. It is

well settled that when technical considerations and merit are pitted against each other, merit has to be preferred. Having regard to the totality of the circumstances and in view of the fact that the plaintiff has not categorically denied the assertions of defendant No.1, I am of the opinion that the prayer of defendant No.1 is reasonable and acceptable. His request is required to be accepted to meet the ends of justice. Hence, the application is allowed, as prayed for. Defendant No.1 is permitted to examine the then Talathi and Gramsevak prior to the examination of the witnesses by the plaintiff and defendant No.1.

Date : 09.08.2018

(S.K. Khan)
Jt. Civil Judge (J.D.),
Barshi.

CERTIFICATE

I affirm that the contents of this P.D.F. file Order are same word to word as per original Order.

Name of Stenographer :

Court Name : S.K.Khan,
Jt.C.J.J.D.& J.M.F.C. Barshi

Date : 09.08.2018

Order signed by the
presiding officer on : 09.08.2018

Order uploaded on : 09.08.2018

