

R.C.S. No. 45/2018
(Krushna Dhiwar & ors. Vs. Lalita Chavan)

Order below Exh. 84
(Passed on 07th February, 2024)

This is an application filed by the plaintiffs for issuance of witness summons to the concerned officer in the office of Sub Divisional Officer, Mahabaleshwar. It is contended by them that the concerned witness is necessary for proving the case of plaintiffs in the light of consent letter of the father of defendant No.1. There may be some objections before the sale-deed and therefore, necessary documents are required to be brought on record by calling the concerned witness of the said department. Hence, they prayed to issue witness summons. Accordingly, they also prayed for directions to the concerned witness to bring necessary documents alongwith him for the purpose of his examination.

2. The defendant has strongly resisted the application by filing her say at Exh.88. She submitted that the present application has been filed only to delay the proceeding. The plaintiffs are not sure regarding the so called objections. Waghu Dhiwar has obtained necessary permission before entering into the sale agreement from the concerned Sub Divisional Office. Even, he prayed to pay ten times consideration amount in the office of Tahsildar Wai. The necessary receipts and the order of Sub Divisional Officer have already been filed alongwith list (Exh.68) by the defendant. Those documents have already been exhibited. Before granting the necessary permission for the sale, objections raised by the concerned persons were already decided by the revenue department. Therefore, after compliance of all the legal necessities,

the permission for the same was granted. This fact is very well known to the plaintiffs. Hence, even after filing application (Exh.53), the present application has been filed. If the plaintiffs were aggrieved by the order of Sub Divisional Office, they could have filed appeal in accordance with the provision of Section 12 of the Bombay Interior Village Vatan Abolishing Act, 1958. The concerned office has already taken due care before granting the permission. In fact, there are no objections after filing of the application (Exh.53) and therefore, the present application is baseless. Hence, it be rejected.

3. Perused the application and say alongwith the entire record. Heard both the sides, at length. Learned Advocate for the plaintiffs have also filed written argument at Exh.88. In which, he submitted that though the name of Waghu Jayram Dhivar was mutated in the revenue record, but at that time Babu Jayram Dhivar was also having right in it. The sale-deed is not binding upon the defendant. Therefore, it is necessary to call necessary documents so as to ascertain the fact whether any other person has consented the said transaction. In fact, the defendant has not revealed any such facts. Even, it is not clear that said sale-deed was executed for the legal necessity of joint family. In such circumstances, the witness summons be issued, as prayed.

4. Learned Advocate for the defendant vehemently submitted that the plaintiffs are only intending to prolong the matter. It has been instituted in the year 2018 and the defendant is more than 80 years of age. Similar types of applications were filed by the plaintiffs, which came to be rejected and therefore, this application be rejected with compensatory cost.

5. Perusal of record shows that the plaintiffs filed application (Exh.80) for issuance of witness summons to the Sub Registrar Wai with directions to bring certified copy of the sale-deed alongwith its Index. Said application came to be rejected vide order dtd. 05.09.2023 with observations that the certified copies of the sale-deeds were already filed on record and in such circumstances, there was no necessity to call the Sub Registrar as a witness and to direct to him to bring certified copies of the sale-deeds.

6. Now, by this application, the plaintiffs are intending to examine the concerned officer in the office of Sub Divisional Officer, Mahabaleshwar so as to establish the fact of any action in accordance with the objections raised or the consent given before granting the permission for sale. The present suit has been filed for the declaration that the sale transactions entered into by the predecessors of defendant namely Waghu Jayram Dhivar in the year 1982 are not binding on the share of plaintiffs and their predecessors. The plaintiffs have also prayed for the declaration of ownership. They have also prayed for separate and vacant possession of the suit property, as well.

7. Considering the nature of suit, in my opinion, the proposed witness is necessary to be examined, especially when the predecessor of defendant namely Babu Jayram Dhivar filed application (Exh.53) before the Sub Divisional Officer Mahabaleshwar on 13.07.1977. Moreover, the fair opportunity has to be given to the plaintiffs to prove their case. In such circumstances, in view of the above discussion, the present application deserves to be allowed. Hence, the order:

ORDER

1. The application (Exh.84) is hereby allowed.
2. Issue witness summons to the concerned officer / employee in the office of Sub Divisional Magistrate Mahabaleshwar in respect of the action taken by the office on the application (Exh.53).
3. The concerned witness is also directed to bring the necessary documents filed in accordance with the application (Exh.53) in their office.

[Dictated and pronounced in open Court.]

Date:- 07/02/2024

(R. M. Bhende)
2nd Jt. Civil Judge, Jr. Dn., Wai