



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

WRIT PETITION NO. 5463 OF 2024

Kalawati Daniyal Khandagle Through Gpa Michael Daniyal
Khandagale

VERSUS

Rambhabai Natha Khandagale Deceased Thr Lrs Dadu Natha
Khandagle Deceased And Others

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Mr. P. R. Nangare, Advocate for the Petitioner

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CORAM : AJIT B. KADETHANKAR, J.

DATED : 04TH SEPTEMBER, 2026

P.C. :-

. This matter was on yesterday's board. Nobody appeared for the respondent's side. This Court after hearing Mr. P. R. Nangare, learned Advocate for the petitioner passed an extensive order wherein the conduct of the respondent was recorded. It is evident fact that despite service of notice from the Trial Court, the respondents/defendants did not appear and hence, the suit was decreed observing that the defendants were served and yet did not appear.

2. Subsequently, an application under Order IX Rule 13 of the Civil Procedure Code was filed by the defendants which, after hearing all the parties came to be allowed. The petitioner

has taken exception to the said order. Yesterday, this Court has passed a detailed order. For the sake of convenience and to avoid repetition of the sequence of facts, the order dated 03.09.2026 is reproduced as follows:

Petitioner's suit for declaration of title of ownership filed in 2010 came to be decreed by the trial court. It is an undisputed fact that the suit summons were issued by the trial court. However nobody appeared for the defendants. Ultimately after hearing the petitioner/plaintiff the trial court decreed the suit. Two years later, an application under Order 9 Rule 13 of the Code of Civil Procedure was moved by the defendants seeking setting aside of the decree that was passed by the trial court. Said application was strongly opposed by the petitioner. The petitioner demonstrated that there was sufficient service of notice to the defendants. However, they chose not to appear before the court.

2. After hearing both the parties, the trial court has been pleased to pass the impugned judgment and order dated 13.02.2024 in Civil Misc. Application No.13 of 2012 whereby the application was allowed and the judgment and decree passed by the court in R.C.S. No.105 of 2010 was set aside. Cost of Rs.3000/- was imposed on the applicant therein. At clause no.4 of the order, the defendants were directed to file written statement within statutory period from the date of their appearance and to proceed with the suit as early as possible. Feeling aggrieved by the said order, the petitioner has filed present petition.

3. *Mr.Nangare, learned advocate for the petitioner submits that the service of suit summons was complete and falls under the caption of “duly served” within the meaning of Order 5 Rule 15 of C.P.C. He would submit that the trial court erred in holding that the defendants were not duly served. Apart from this, he would submit that the defendants have not adhered to the directions given by the trial court at clause no.4 of the operative order. The defendants till today have not filed written statement. Further contention is that after the suit is restored, the defendants never turned to the trial court to prosecute the suit. He produces on record a copy of the case-status report fetched from the official Website of District and Sessions Court, Ahmednagar. Said copy is taken on record and marked as “X” for identification. He submits that even in the present Writ Petition also nobody appeared despite having been served by High Court notice. He submits that even the petitioner has served the respondents taking recourse to public notice under Order 5 Rule 20 of C.P.C. under the orders of this court. The notices were published and copies of the newspaper were also deposited in this court. He would submit that it is apparent that the respondents/defendants do not want to proceed with the suit. In view of this, he submits that the Writ Petition be allowed observing firstly that the defendants were duly served in the trial court. Secondly, there was no necessity to set aside the decree as is ordered in the impugned order, and thirdly that the defendants/respondents have lost their interest in defending the suit.*

4. *This matter was listed from time to time. The first notice was issued on 12.06.2024. On 05.08.2024 permission was given to the petitioner to serve respondent nos.1D, 1E and 1F by private service. Fresh notice was also issued*

to these respondents. Again, notices were reissued to respondent nos.1D to 1F on 11.11.2024 observing that the earlier notices were not received by them. Thereafter, the petitioners sought to furnish full address of respondent nos.1D to 1F with a prayer to issue notice to these respondents. Said request was accepted. In the meantime, for want of submitting such fresh address the Writ Petition was ordered to be dismissed against respondent nos.1D to 1F. On 16.07.2025 this court issued fresh notice to respondent nos.4 and 5. In the meantime the petitioner got the Writ Petition restored against respondent nos.1D to 1F. Under the orders of this court, they were served by paper publication. Thereafter, as per the order date 06.08.2026 the petitioner issued notice by paper publication to respondent no.1D, 1F, 4 and 5 and submitted copies of the newspaper in the Registry.

5. Mr.Nangare, learned advocate for the petitioner submits that as such even after service of notice to the respondents by various modes, none of them caused their appearance. In the meantime, Mr.L.B.Pallod - learned advocate for the respondent has filed his 'no instructions purshis' and has also submitted that he has even intimated his client that he will be filing 'no instructions purshis' for want of instructions. It is reported that notice by advocate is served on the respondents.

6. Today when the matter was called out in the morning session, none appeared for the respondents. Hence, the matter was kept in the second session. In the second session also, none appeared for the respondents.

7. Place the matter tomorrow i.e. on 04.09.2026. for passing order.

3. With an intention to give another chance to the responding side, the matter was kept today for passing order. Today also when the matter is called out, nobody appears for the respondents. In view of the above, I record my findings as under:

4. The bailiff reports placed on record by Mr. Nangare, learned Advocate for the petitioner would clearly show that there was sufficient notice upon the defendants under Order V Rule 15 of the Civil Procedure Code. I could not see any convincing reasoning in the order passed by the Trial Court allowing application under Order IX Rule 13 of the Civil Procedure Code whereby the service effected on the family members of the defendants was held to be invalid under Order V Rule 15 of the Civil Procedure Code. Besides this, it is necessary to take into consideration the conduct of the defendants/respondents.

5. I have already extensively recorded that even after restoration of the suit to its original position, the defendants never turned to the Court to defend the suit further. They also did not seek any amendment to the operative part of the order restoring the suit. Even when the Writ Petition is filed, they

did not respond any of the notice issued by this Court. The respondents were sought to be served by the various modes by the petitioner and even by taking recourse to Order V Rule 20 of the Civil Procedure Code. The notices are deemed to be served on the respondents.

6. In view of this, I find that the defendants/respondents have misused the concession granted by the Trial Court to them by allowing the application below Order IX Rule 13 of the Civil Procedure Code.

7. Mere pendency of suit in this contingencies is nothing but an abuse of process. Recording my disapproval to the reasoning rendered by the Trial Court in the impugned order, I find that the Writ Petition deserves to be allowed. Hence, Writ Petition stands **allowed**. Impugned order dated 13.02.2024 passed in Civil Misc. Application No.13 of 2012 by the learned Civil Judge Junior Division Pathardi, Dist. Ahmednagar stands quashed and set aside.

(AJIT B. KADETHANKAR, J.)