

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1724 OF 2015

CHAMPABAI LAXMANDAS RATHOD,
LRS' SULOCHANA RUPCHAND PARDESHI
AND OTHERS

PETITIONERS

VERSUS

TAHER ABDUL GAFOOR TAMBATKAR
AND OTHERS

RESPONDENTS

Mrs.Anjali (Bajpai) Dube, Advocate for the petitioners.
Mrs.S.T.Kazi, Advocate for respondent Nos. 1 to 3.

(CORAM : RAVINDRA V. GHUGE, J.)
DATE : 26/02/2015

PER COURT :

1. I have heard Mrs.Dube learned Advocate for the petitioners and Mrs.Kazi on behalf of respondent Nos. 1, 2 and 3.
2. The petitioners are aggrieved by the order dated 06/01/2015, passed by the Trial Court below Exh.80 in RCS No.222/2002.
3. The petitioners indicate that a Spl.C.S.No.98/1973 was preferred by the ancestors of the Respondents as against the petitioners and their ancestors. Petitioners are tenants of the suit property from 1942. Original owner has died issue less. Said RCS No.53/1970 has been dismissed by judgment dated 21/03/1974, wherein the Trial Court has

drawn a conclusion that the said plaintiffs have not proved that they are the legal heirs of the original owner Abdul Razak Nurmohamed.

4. Some other persons claiming to be the legal heirs of Abdul Razak Nurmohamed have preferred Spl.C.S.No.140/1984, which was dismissed on 28/06/1988 by concluding that the said suit was not barred by res-judicata owing to the judgment dated 21/03/1974 in Spl.C.S.No.53/1970, but the Court had no jurisdiction to entertain the said suit.

5. The petitioners further submits that Reg.Civil Appeal No.505/1988 was preferred in relation to the judgment dated 28/06/1988 in Spl.C.S.No.140/1984, which has also been dismissed by concluding that the Trial Court had no jurisdiction to entertain the suit and the said conclusion of the Trial Court was sustained.

6. The petitioners contend that the alleged heirs to the earlier plaintiffs have preferred RCS No.222/2002. The plaintiff at Sr.No.1 is the legal heir of plaintiff No.2 Mohd.Ismail @ Ismalibhai Mehmoodbhai Tambatkar in Spl.C.S.No.53/1970. The petitioners indicate that there are several other persons in this suit who are alleged heirs of the earlier plaintiffs.

7. Issues have been cast on 01/12/2009. Recording of evidence has commenced. In this backdrop, application Exh.80 has been filed by the petitioners on 04/08/2014 praying for issue Nos.1, 3 and 4 to be taken up pre-emptorily and be decided as preliminary issues.

8. By the impugned order dated 06/01/2015, the application has been rejected. Submission is that, the Trial Court could very well adjudicate as to whether it had jurisdiction to entertain the suit and whether the suit was maintainable. Time and energy of the Court as well as the litigating sides would be saved if these issues are decided as preliminary issues rather than the Trial Court going the full distance in deciding the said issues alongwith all other issues at the final stage in the matter.

9. Mrs.Kazi, learned Advocate for the respondents has vehemently opposed the said request. Her contention is that the issues, having been cast on 01/12/2009, were known to the petitioners. In the event, they were interested in saving the time of the Court as well as of the litigating sides, they could have made a request in promptitude and could have prayed for an early decision on issue Nos. 1,3 and 4. Exh.80 has been filed practically after 4 years and 8 months from the date of the framing of the issues. She, therefore, submits that since the suit is pending adjudication for 13 years, the same could be expedited.

10. Having considered the submissions of the litigating sides, I do not find that the petitioners' contentions can be sustained in the light of the fact that the issues were cast on 01/12/2009 and the petitioners have not made any request with promptitude to the Trial Court for issue Nos. 1, 3 and 4 to be decided as preliminary issues. Since 5 years have lapsed from the framing of the issues, it cannot lie in the mouth of the petitioners that the time of the Court would be saved if Exh.80 is allowed.

11. As such, I do not find any cause for interfering with the impugned order. However, keeping in view that the suit is pending hearing for 13 years, and probably the third generation of litigants are before the Court, ends of justice would be met by expediting the said suit.

12. As such, this petition is disposed of with the directions to the Trial Court to decide RCS No.222/2002 as expeditiously as possible and preferably on or before 31/12/2015.

13. The litigating parties assure co-operation and as such the Trial Court would be at liberty to reject applications for adjournment, if the same are based on frivolous or unreasonable grounds.

(RAVINDRA V. GHUGE, J.)