

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

WRIT PETITION NO. 3586 OF 2014

Dwarkadas s/o Janardhan Kulthe,
Age: 58 years, Occ: Agri.,
R/o. Budhwar Peth, Vasmathnagar,
Tq. Vasmathnagar, Dist. Hingoli
and others.

...Petitioners

versus

Sheelabai w/o Santukrao Dahale,
Age: 60 years, Occ: Household,
R/o. Budhwar Peth, Vasmathnagar,
Tq. Vasmathnagar, Dist. Hingoli,
and another.

...Respondents

.....
Mr. S.P. Katneshwarkar, Advocate for petitioners.
Mr. A.S. Deshpande, Advocate for respondent No. 1.
.....

CORAM : SUNIL P. DESHMUKH, J.

DATE : 9th FEBRUARY, 2015

ORAL ORDER :

. Rule. Rule made returnable forthwith. Heard learned Counsel for the petitioners and Mr. Deshpande, learned Counsel for respondent No.1.

2. Perused the impugned order dated 07/01/2014 passed on Exhibit-50 in Regular Civil Suit No. 140 of 2010. The application Exhibit-50 has been dismissed for unavailability of learned Counsel

for the petitioners. The application has been considered in absence of petitioners as well as their Counsel and for technical reason that the application does not contain paragraph of 'proposed amendment' and that the defendants want to alter their stand as regards the property from being ancestral to self-acquired. Counsel for petitioners submits that in any case, the petitioners deserve to be heard and in their absence, the application could not be decided with observations as are appears.

3. Learned Counsel for original plaintiff, however, submits that petitioners had been negligent in pursuing their application and the reason underlying the rejection of the application is proper, appropriate and justifiable.

4. However, I consider, in the peculiar facts of the case, an opportunity deserves to be given to the defendants to be heard in their application Exhibit-50. As such, impugned order dated 01/07/2014 is set aside. The application Exhibit-50 is restored to its original file, as has been subsisting before 01-07-2014 subject to payment of costs of Rs.5000/- (Rs. Five thousand only). Cost be deposited in the trial Court within a period of three weeks from today, to be paid to plaintiff. Trial Court to decide application Exhibit-50 in accordance with law and merits, as expeditiously as possible.

5. Rule made absolute in above terms.

[SUNIL P. DESHMUKH, J.]