

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

WRIT PETITION NO.8471 OF 2014

Sudhir s/o Baburao Lande,
Age 50 years, Occu. Service,
R/o Loni (Samarth Colony),
Taluka Rahata,
District Ahmednagar

..Petitioner

Versus

1. Laxman s/o Haribhau
Khandekar, Age 32 years,
Occu. Agriculture
2. Bhaginath s/o Haribhau
Khandekar, Age 28 years,
Occu. Agriculture
3. Ramdas s/o Haribhau Khandekar,
Age 22 years, Occu. Agri.,

All R/o Khandala,
Taluka Shrirampur
District Ahmednagar

4. Laxman s/o Maruti Sonwane,
Age 60 years, Occu.Agri.,
R/o Khandala, Taluka
Shrirampur,
District Ahmednagar

5. Baburao s/o Kisanrao Lande
(since deceased)

..Respondents

Mr R.R. Karpe, Advocate for petitioner
Mr K.B. Autade, Advocate for respondents 1 to 3

CORAM : N.W. SAMBRE, J.

DATE : 2nd December 2015

PER COURT

Heard.

2. In 2007, the suit is initiated against the petitioner for injunction and fixation of boundaries, in which the order for 'No W.S.' came to be

passed on 31st August 2008. On 28th August 2014, an application for permission to place on record written statement, when recording of evidence of defendants was to commence, came to be filed vide Exh.67 which came to be rejected vide order dated 11th September 2014 by Joint Civil Judge, Junior Division, Shrirampur, as such present petition.

3. While trying to make out a case seeking indulgence in the matter, learned Counsel for the petitioner has invited attention of this Court to the medical papers. He would then urge that as the petitioner and his father were required to undergo the medical treatment for major ailment, the written statement was not filed within the time stipulated, as provided under Order VIII, Rule 1 of Code of Civil Procedure. The father of the petitioner then expired during the said period.

4. According to learned Counsel for the petitioner, even if the suit has reached at an advanced stage, i.e. recording of evidence of plaintiff is over, this Court, in the above background should permit the petitioner to place on record written statement by setting aside the impugned order.

5. Mr Autade, learned Counsel for the respondents No.1 to 3 - plaintiffs would urge that the petitioner has come out before this Court with complete dishonest intention, as (a) he has raised dishonest plea of adverse possession; (b) the medical treatment was administered till 2010 and thereafter no explanation coming forward

as to why the written statement was not filed; and (c) the ground of medical assistance is at all not pleaded in the application Exh.67.

6. According to him, the application Exh.67 is rightly rejected by the trial Court.

7. Having bestowed my anxious thoughts over the submissions made, it is required to be noted that the medical evidence that is placed on record is not controverted by the plaintiffs-respondents. The petitioner has lost his father in 2010 because of ill-health and thereafter, it appears that the petitioner was also required to undergo substantial medical treatment for the serious ailment. In addition to above, it is required to be noted that no prejudice will be caused to respondent, if the petitioner is permitted to place the written statement on record, as in the trial the recording of evidence of the respondents-plaintiffs is over and is fixed for recording evidence of defendant. Apart from above, this Court is required to consider the claim for filing of written statement of the defendant liberally in the light of the law laid down in catena of decisions

8. However, this will not be considered as granting premium in favour of petitioner, as the petitioner does not appear to be diligent while exercising his right.

9. For the reasons aforesaid, the order passed by the Joint Civil Judge, Junior Division, Shrirampur, below Exh.67 in Regular Civil Suit

No.168 of 2007 on 11th September 2014, is hereby set aside. The application Exh.67 stands granted subject to payment of costs of Rs.20,000/- (Rs.Twenty thousand), to be deposited before the trial Court within a period of two weeks from today, to which the plaintiffs-respondents will be entitled to.

10. Learned Counsel for the petitioner Mr Karpe assures this Court that the petitioner shall co-operate the Court below in expeditious disposal of the suit.

11. Writ Petition stands allowed in above terms.

(N.W. SAMBRE, J.)

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