

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

WRIT PETITION NO.1608 OF 2015

1. Sow. Indubai w/o Bapurao Shirsat, Age 57 years, Occu. Agriculture, R/o Nalwandi road, Gajanan Nagar, Beed, Taluka and District Beed
2. Rajkumar s/o Bapurao Shirsat, Age 34 years, Occu.Agri., R/o As above
3. Suhas s/o Bapurao Shirsat, Age 34 years, Occu. Agri., R/o As above
4. Amol s/o Bapurao Shirsat, Age 25 years, Occu. Agri., R/o As above

.. Petitioners
(Orig.Plaintiffs)

Versus

1. The State of Maharashtra, through Collector, Beed District Beed
2. Sub-Divsiional Officer, Beed, District Beed
3. Tahsildar, Beed, Taluka and Dist. Beed
4. Revenue Circle Inspector, Beed, Taluka and Dist. Beed
5. Talathi, Taraf Pingle, Beed Taluka and Dist. Beed
6. District Wakf Officer, Beed, Taluka and District Beed
7. Hakim Mahammad Ekbal Kha, S/o Maheboob Khan, Age Major, R/o Beed, Taluka and Dist. Beed

8. Abdul Rashid Khan s/o
Mustafa Khan, Age Major,
R/o As above
9. Yusuf Khan Mustafa Kha,
Age Major, R/o As above
10. Ismail Khan s/o Maheboob
Khan, Age Major,
R/o As above

..Respondents
(Orig. Defendants)

Mr R.K. Jadhavar, Advocate for petitioners
Mr A.P. Basarkar, A.G.P. for respondents 1 and 2

CORAM : N.W. SAMBRE, J.

DATE : 9th December 2015

PER COURT

Heard.

2. The petitioners – plaintiffs to Regular Civil Suit No.184 of 2008 for ownership and perpetual injunction have objected the ruling given by learned Civil Judge, Senior Division, Beed vide order dated 25th September 2014, below Exh.107, accepting the written statement of the respondents on record.

3. Learned Counsel for the petitioners would submit that once by an order dated 28th December 2009, the suit was proceeded without written statement as against defendants No.1 to 6, the acceptance of written statement at subsequent stage, that too without setting aside the order dated 28th December 2009 is not sustainable.

4. He would then urge that the provisions of Order VIII, Rule 1 of Code of Civil Procedure mandates the defendants to file their written

statement within first 30 days and thereafter extended period of 60 days, i.e. 90 days, as such the order impugned is not sustainable.

5. Learned A.G.P. while supporting the order impugned would urge that the written statement was already accepted and no prejudice is caused to the petitioners – plaintiffs, as the trial in the suit yet to commence. According to him, the suit is at the stage of deciding the application Exhibit 5 i.e. application for injunction. Petition as such is liable to be rejected.

6. By order dated 25th September 2014, learned trial Court has noted that the written statement which is filed on record is under the signature of the Sub-Divisional Officer/ Deputy Collector. The said written statement though is a part of record of the Court, however, the predecessor has not made any endorsement thereon and as such, the Court has proceeded to presume that the written statement was rightly accepted by the Court.

7. Having bestowed my anxious thoughts over the submissions made by the parties, it is noted that the earlier order of proceedings without written statement and thereafter accepting the written statement on record prompts this Court to form an opinion that the order dated 28th December 2009 has merged in the order dated 25th September 2014, but it could be easily presumed that the said order dated 25th December 2009 is set aside by accepting the written statement of the defendants on record. The plaintiffs – petitioners to

the present proceedings have failed to demonstrate the prejudice to them, as the trial in the suit is yet to commence.

8. In my opinion, no case for interference is made out. As such petition fails, stands dismissed.

(N.W. SAMBRE, J.)

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