

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8208 OF 2013

Shri. Tanaji Dattoba Pawar,]
Age: 62 years, Occ: Agri,]
R/at: Tadasar, Tal: Khanapur, Dist: Sangli].. Petitioner

Versus

1. Shri. Lalasaheb Dattoba Pawar,]
Age: 62 years, Occ: Agri,]
R/at: Govare, Tal: Karad, Dist: Satara,]
2. Shri. Balasaheb Dattoba Pawar,]
Age: 24 years, Occ: Agri,]
R/at: Govare, Tal: Karad, Dist: Satara,]
3. Shri. Mahesh Balasaheb Pawar,]
Age: 49 years, Occ: Agri,]
R/at: Govare, Tal: Karad, Dist: Satara,]
4. Smt. Shalan Mohan Deshmuk,]
Age: 52 years, Occ: Housewife,]
R/at: Kadegav, Tal: Khanapur, Dist: Sangli,]
5. Smt. Vasanti Shahaji Patole,]
Age: 46 years, Occ: Housewife,]
R/at: Dusheare, Tal: Karad, Dist: Satara,]
6. Shri. Shivaji Vithoba Desai,]

- Age: 60 years, Occ: Agri,]
R/at: Govare, Tal: Karad, Dist: Satara,]
7. Shri. Ratan Vithoba Desai,]
Age: 62 years, Occ: Agri,]
R/at: Govare, Tal: Karad, Dist: Satara,]
8. Shri. Prasad Dhanaji Deshmukh,]
Age: 24 years, Occ: Agri,]
R/at: Govare, Tal: Karad, Dist: Satara,]
9. Smt. Sindhu Danaji Deshmukh,]
Age: 42 years, Occ: Housewife,]
R/at: Govare, Tal: Karad, Dist: Satara,]
10. Shri. Maruti Gyanu Lohar,]
Age: 70 years, Occ: Agri,]
R/at: Govare, Tal: Karad, Dist: Satara,]
11. Smt. Dhondubai Nathuram Bhosale,]
Age: 45 years, Occ: Housewife,]
R/at: Govare, Tal: Karad, Dist: Satara,]
12. Shri. Balwant Shankar Bhosale,]
Age: 40 years, Occ: Agri,]
R/at: Govare, Tal: Karad, Dist: Satara,]
13. Shri. Hanumanth Appa Pokale,]
Age: 30 years, Occ: Agri,]
R/at: Govare, Tal: Karad, Dist: Satara,]

14. Shri. Ramkrishna Karande,]
Age: 65 years, Occ: Agri,]
R/at: Govare, Tal: Karad, Dist: Satara,]
15. Shri. Popat Pira Karande,]
Age: 35 years, Occ: Agri,]
R/at: Govare, Tal: Karad, Dist: Satara,]
16. Shri. Sanjay Rajaram Lohar,]
Age: 30 years, Occ: Agri,]
R/at: Govare, Tal: Karad, Dist: Satara,]
17. Smt. Mangal Rajaram Lohar,]
Age: 52 years, Occ: Housewife,]
R/at: Govare, Tal: Karad, Dist: Satara,]
18. Shri. Dadasaheb Sakharam Pawar,]
Age: 38 years, Occ: Agri,]
R/at: Tadsar, Tal: Khanapur, Dist: Sangli,]
19. Shri. Bhimrao Ganu Phatak,]
Age: 50 years, Occ: Agri,]
R/at: Tadsar, Tal: Khanapur, Dist: Sangli,]
20. Shri. Shivaji Dinkar Pawar,]
Age: 50 years, Occ: Agri,]
R/at: Tadsar, Tal: Khanapur, Dist: Sangli,]
21. Shri. Adhikrao Dinkar Pawar,]
Age: 45 years, Occ: Agri,]
R/at: Tadsar, Tal: Khanapur, Dist: Sangli,]

22. Shri. Ramchandra Dinkar Pawar,]
Age: 40 years, Occ: Agri,]
R/at: Tadsar, Tal: Khanapur, Dist: Sangli,]
23. Shri. Pradeep Mohanrao Patole,]
Age: 30 years, Occ: Agri,]
R/at: Tadsar, Tal: Khanapur, Dist: Sangli,]
24. Shri. Madhav Narayan Kulkarni,]
Age: 70 years, Occ: Agri,]
R/at: Tadsar, Tal: Khanapur, Dist: Sangli,]
25. Shri. Vithal Aabasoh Pawar,]
Age: 70 years, Occ: Agri,]
R/at: Tadsar, Tal: Khanapur, Dist: Sangli,]
26. Shri. Dadaso Madhavrao Pawar,]
Age: 40 years, Occ: Agri,]
R/at: Tadsar, Tal: Khanapur, Dist: Sangli,]
27. Shri. Ramchandra Panduran Mulik,]
Age: 60 years, Occ: Agri,]
R/at: Tadsar, Tal: Khanapur, Dist: Sangli,]
28. Shri. Ramchandra Naru Pawar,]
Age: 60 years, Occ: Agri,]
R/at: Tadsar, Tal: Khanapur, Dist: Sangli,]
29. Shri. Uttam Bhimrao Pawar,]
Age: 50 years, Occ: Agri,]

- R/at: Tadsar, Tal: Khanapur, Dist: Sangli,]
30. Shri. Chandrakant Bhimrao Pawar,]
Age: 45 years, Occ: Agri,]
R/at: Tadsar, Tal: Khanapur, Dist: Sangli,]
31. Shri. Suresh Bhimrao Pawar,]
Age: 40 years, Occ: Agri,]
R/at: Tadsar, Tal: Khanapur, Dist: Sangli,]
32. Smt. Lilavati Bhimrao Pawar,]
Age: 70 years, Occ: Housewife,]
R/at: Tadsar, Tal: Khanapur, Dist: Sangli,]
33. Shri. Shripati Ganu Pawar,]
Age: 70 years, Occ: Agri,]
R/at: Tadsar, Tal: Khanapur, Dist: Sangli,].. Respondents

Mr. Ajit J. Kenjale, for the Petitioner.

Mr. Pradeep Gole, for the Respondent No.1.

Mr. Bhushan Walimbe, for the Respondent Nos.2 & 3.

CORAM : R.M. SAVANT, J.
DATE : 19th OCTOBER, 2015

ORAL JUDGMENT

1. Rule, with the consent of the Learned Counsel for the contesting Respondents i.e. Respondent No.1/original Plaintiff and the Respondent Nos.2 & 3/Defendant Nos.1 and 2 made returnable forthwith and heard.

2. The Writ Jurisdiction of this Court is invoked against the order dated 02.01.2013 passed by the Learned 2nd Joint Civil Judge Junior Division, Karad, by which order the application Exh.120 filed by the Petitioner for setting aside the “No Written Statement” order and for being permitted to file the Written Statement came to be rejected.

3. The suit in question i.e. Regular Civil Suit No.449 of 2001 has been filed for partition and separate possession of the suit properties by the Respondent No.1 herein who is the original Plaintiff. The Petitioner herein who is the Defendant No.3 in the suit was served with the suit summons on 06.12.2001 and the first date of hearing after receipt of suit summons was 28.10.2002. On which date, he was required to file his Written Statement in terms of Order VIII Rule 1 of the Civil Procedure Code (For short “CPC”). However, he did not file his Written Statement and has filed the instant application 11 years thereafter. In the instant application Exh.120, it is the case of the Petitioner i.e. Defendant No.3 that he was represented by the Defendant No.1 that the suit would be settled and that he should not come to the Court. It is believing the Defendant No.1 that he did not file his Written Statement. The said application Exh.120 was opposed to on behalf of the Plaintiff as well as the Defendant Nos.2 and 3. It was their case that since the Defendant No.3 has not filed his Written Statement for 11 years, he should not be

permitted to file his Written Statement. The Trial Court considered the said application Exh.120 and has by the impugned order dated 02.01.2013 rejected the same and the rejection is principally on the ground that the instant application Exh.120 has been filed 11 years after the suit summons was served. As indicated above, it is the said order dated 02.01.2013 passed by the Trial Court i.e. Learned 2nd Joint Civil Judge Junior Division, Karad, which is taken exception to by way of the above Petition.

4. The Learned Counsel for the Petitioner Mr. Ajit J. Kenjale would contend that since the suit was filed prior to the amended provisions of the CPC coming into force in the year 2002, the time to file Written Statement in terms of Order VIII Rule 1 does not apply and the unamended CPC would apply. The Learned Counsel would contend that since it is the suit for partition, it would be just and proper to permit the Defendant No.3 to file his Written Statement by putting him to terms.

5. The Learned Counsel appearing for the contesting Respondents i.e. Mr. Pradeep Gole for the Respondent No.1 and Mr. Bhushan Walimbe for the Respondent Nos.2 and 3 would oppose the above Petition and would contend that having regard to the time frame after which the instant application was filed, no indulgence can be shown to the Petitioner.

6. Having heard the Learned Counsel for the parties, in my view, having regard to the fact that the suit filed is prior to the amendment of the CPC, the rigors of the amended CPC are not applicable to the suit. It is also required to be noted that the suit has not progressed as much as issues have not been framed as also the suit being one for partition, it would be just and proper to allow the Petitioner i.e. the Defendant No.3 to file the Written Statement. Though the Learned Counsel initially opposed the Writ Petition, they have no objection to the above said course of action being followed and the Petitioner is put to terms. In my view, therefore, the impugned order dated 02.01.2013 is required to be quashed and set aside and is accordingly quashed and set aside. The application Exh.120 would stand allowed. In the facts and circumstances of the case, the Petitioner to pay costs of Rs.2000/- each to the Plaintiff i.e. Respondent No.1 and to Defendant Nos.2 and 3 i.e. Respondent Nos.2 and 3. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute.

7. The Written Statement to be filed within two weeks from date. The suit being of the year 2001, the same is expedited and the Trial Court to decide the same latest by 31.12.2016.

[R.M. SAVANT, J]