

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10061 OF 2014

Mangesh Vyankatrao Khanvilkar : Petitioner
versus
Smt. Geeta Prasad Khanvilkar and ors. : Respondents.

Mr. S G Thorat for the Petitioner.

CORAM : R. M. SAVANT, J.
DATE : 12th January 2015

P.C.

1 The writ jurisdiction of this court is invoked against the order dated 27/08/2014 passed by the learned District Judge-1 Khed by which order the Applications (Exhibits 27, 30, and 37) filed in the Appeal came to be rejected.

2 The said Applications were filed by the original Defendant No.2 who is the Appellant in the Appeal being Civil Appeal No.30 of 2010 and the original Defendant No.4(d) who is the heir of the Defendant No.4. In so far as Applications (Exhibit 27 and 37) are concerned, the same have been filed by the Appellant original Defendant No.2. The Application (Exhibit 27) has been filed by the Appellant to examine the witness in so far as the Will Deed executed by the Defendant No.3 in his favour is concerned, and the Application (Exhibit 37) has been filed by the Appellant to examine the witness to the Sale Deed. The Application (Exhibit 30) has been filed by the Defendant No.4(d)

seeking permission to file her written statement. In the aforesaid two sets of Applications, the Appellant i.e. the original Defendant No.2 and the Defendant No.4(d) have made allegations against the advocate who had appeared for them in the Trial Court and who has filed the Appeal in the Lower Appellate Court. It is their case that it is on account of wrong legal advice that the written statement was not filed by the Defendant No.4(d) and that the witnesses were not examined in so far as the Will Deed and the Sale Deed are concerned. The said applications were opposed to on behalf of the Plaintiff who has filed the suit for partition and possession of her share in the suit property.

3 The Lower Appellate Court having regard to the fact that the Defendant Nos. 1 and 2 had filed their written statement in the suit which written statement was adopted by the Defendant Nos.4 to 8 as also having regard to the fact that the Appellant i.e. the original Defendant No.2 had examined himself and had examined one more witness and thereafter closed his evidence vide Application (Exhibit 75) on 20/01/2009 held that the Appellant and the Defendant No.4(d) cannot be heard to say that they were not given an opportunity to file their written statement or lead evidence. The Lower Appellate Court further adverted to the fact that the instant Appeal being Civil Appeal No.30 of 2010 is filed by the same advocate on 28/4/2010 after the suit was decreed on 22/3/2010 and that it is after a period of 4 years

of filing of the said Appeal and it is during pendency of the said Appeal before the Lower Appellate Court that the instant Applications came to be filed by the Appellant and the Defendant No.4(d). The Lower Appellate Court was therefore of the view that the relief sought vide the said Applications having regard to what has been transpired in the suit cannot be granted.

4 Having regard to the ground on which the Applications have been rejected, the gist of which has been referred to in the instant order, the impugned order passed by the Lower Appellate Court cannot be faulted with. No case for interference is therefore made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]