

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

WRIT PETITION NO. 337 OF 2015

Dilip Shankar Mulay

..Petitioner.

Vs

Pradip Shankar Mulay and Ors

.. Respondents

Mr. Dilip Shankar Mulay, petitioner in-person.

CORAM : R.G.KETKAR,J.

DATE : 10/06/2015

PC:

1. Heard Mr. Dilip Shankar Mulay, petitioner in-person.
2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as original plaintiff, has challenged the order dated 17.8.2013 passed by the learned Civil Judge, Sr. Dn., Thane, below Exh.599 in Regular Civil Suit No.1407 of 2012. By that order, the learned trial Judge rejected the application made by the plaintiff praying for (A) to prevent failure of justice, irreparable loss, damage to the merits of partition suit, cross examination of the plaintiff be stayed which is likely to start on 18.6.2013, (B) Regular Civil Suit No.1407 of 2012 be kept on daily board to decide 15 pending applications of the plaintiff till 30.6.2013, (C) cross examination of the plaintiff be started after deciding pending application of the plaintiff (D) necessary order be passed on the application Exhibit 599.

3. In support of this petition, Mr. Mulay strenuously contended that he has instituted Special Civil Suit No.1303 of 1996 for partition against the respondent. During the pendency of the suit, on 21.3.1999 the respondent made complaint to the Police Inspector attached to Naupada Police Station alleging house breaking on 9.3.1999 by the plaintiff. He submitted that till date the police have not even called the petitioner to the police station for recording his statement. In short, he submitted that the respondent has made false complaint of house breaking as also dacoity against the petitioner. The petitioner took out application dated 26.2.2009 at Exhibit 379 for framing following Issues:

(a) Does defendant no.1 prove plaintiff, defendant no.2 and her daughter, has broken lock, on ground floor, rooms of suit property on 9.3.1999 and have illegally, forcibly taken away, all the original documents, in respect of Amba Niwas , Flour Mill and Guru Prasad Vastu Yojna plot at Dhayari - Pune vide Exhibit 118.

(b) Is defendant no.1 liable to pay compensatory cost of Rs.3000/- as per Civil Procedure Code Section 35A, for making, false, illegal , vexatious claim and defence vide Exhibit 118.

He submitted that the learned trial Judge ought to have framed issues as set out at Exhibit 379. Instead of deciding the application, the learned trial Judge has rejected the application Exh.599. He, therefore, submitted that the trial Court may be directed to dispose of all applications first and till then the

plaintiff's cross examination be stayed. Till such time, all the pending applications are decided, the proceedings before the trial Court may be stayed.

4. I have considered the submissions advanced by Mr Mulay. I have also perused the material on record. As noted earlier, the petitioner has instituted suit for partition in the year 1996. The learned trial Judge has noted in paragraph 2 of the impugned order that the issues were framed at Exhibit 98 on 25.2.2002. They were recast in the year 2005. Matter was kept for evidence of the petitioner-plaintiff from time to time. Instead of leading evidence the petitioner started filing applications one after another which were decided by him. The petitioner has filed another 17 applications vide Exhibits 92, 364, 541, 395, 159, 304, 339, 311, 387, 519, 525, 551, 552, 553, 566, 580, 588, 477 and 579 etc. for the inventory of lockers, appointment of receiver, appointment of commissioner, injunction, framing of issues, amendment etc., and thus the Court could not record evidence of the parties though the matter was fixed for cross examination of the plaintiff. In paragraph 3, the learned trial Judge further observed that the applications filed by the petitioner vide Exhibits 92, 364, 541, 395, 159, 304, 339, 311, 387, 519, 525, 551, 552, 553, 566, 580, 588, 477 and 579 etc. would not make any hurdle while deciding the suit. By filing applications after applications,

the petitioner is delaying the matter and is also causing harassment to the defendant. It also amounts to wasting of Court's valuable time. The learned trial Judge accordingly rejected the application.

5. Having regard to the fact that the suit is instituted in the year 1996 as also the issues were framed on 25.5.2002 which were recast in the year 2005, prima facie, I am of the opinion that the learned trial Judge was justified in observing that the petitioner is filing applications after applications with a view to delaying the trial which also causes inconvenience to the Court as the valuable time of the Court is lost in deciding such type of applications.

6. In view thereof as also for the reasons stated in paragraphs 2 and 3 of the impugned order, I do not find that the learned trial has committed any error in passing the impugned order. It is, however, made clear that while deciding the suit the learned trial Judge will dispose of all pending applications. Order accordingly.

(R.G.KETKAR, J.)

