

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 453 OF 2015

Smt. Shantabai A. Patil and anr. .. Petitioners  
vs.  
Sou. Kamal M. Patil and ors. .. Respondents

Mr. Vijay Killedar for the Petitioners.  
Mr. Umesh R. Mankapure for the Respondents.

CORAM : M. S. SONAK, J.  
DATE : 19 MARCH, 2015.

P.C. :-

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] This petition challenges the order dated 3 December 2014 made below Exhibit-87, which has the effect of declining the petitioners/plaintiffs opportunity to lead evidence in respect of prayer clause '13B' of the plaint. The impugned order dated 3 December 2014, reads thus:

Order below Exh.87 in Spl. C.S. No.28/2014.

*Read the application and the say. Heard both parties at length. In view of order dated 09-07-2014 passed by the learned predecessor below Exh.1, the application stands disposed of.*

3] The order dated 9 July 2014, which has been referred in the impugned order, reads thus:

Order below Exhibit-1

*Defendant No.1 to 3 have filed pursis at Exh.72 stating that, they are ready to allot the legal share of plaintiff in the said property. Other defendants not filed their say. Defendant No.3 is daughter of defendant No.2 & defendant Nos.4 & 5 the daughters of plaintiff No.1. As the defendant Nos.1 to 3 are ready to allot the share of plaintiff in the suit property, in my view, on the point of allotment of share it is necessary to hear all the parties on the next date.*

4] In my judgment, based merely upon the order 9 July 2014, the petitioners/plaintiffs could not have been declined opportunity to lead evidence in respect of prayer contained in prayer clause '13B' of the plaint. This is because, irrespective of the issue of shares, it is the case of the petitioners/plaintiffs that the Sale Deed dated 30 August 2013 is not binding upon the plaintiffs for reasons set out in the plaint. Accordingly, the impugned order dated 3 December 2014 is liable to be set aside and the prayer made by the petitioners under Exhibit-87, i.e., the application dated 24 September 2014, is granted.

5] Learned counsel for the respondents pointed out that the application under Exhibit-87 was made by the petitioners/plaintiffs with a *mala fide* intention, knowing fully well that defendant Nos.2

and 6 are aged 78 and 82 years respectively. Further the said defendants suffer from serious ailments. Learned counsel submitted that the entire purpose of making application at Exhibit-87 is to delay the proceedings in the Suit and to thereafter draw some undue mileage by lapse of time.

6] The aforesaid apprehension expressed by the learned counsel for the respondents, can be taken care of, by directing the Civil Judge to conclude the record of evidence on the part of the petitioners/plaintiffs within a period of four weeks from the date of production of an authenticated copy of this order. Further, the petitioners have solemnly stated that the petitioners shall examine only two witnesses in pursuance of the request made under Exhibit-87. This statement is accepted.

7] Accordingly, this petition is disposed of by making the following order:

- a] The impugned order dated 3 December 2014 is set aside and the application under Exhibit-87 stands granted;
- b] The learned Civil Judge, shall conclude the recording of evidence of the petitioners' two witnesses (chief examination

and cross-examination), within a period of four weeks from the date of production of an authenticated copy of this order;

c] The parties to appear before the learned Civil Judge on 30 March 2015 at 11.00 a.m. and produce the authenticated copy of this order ;

d] It is made clear that this Court has not examined the merits of the matter and it will be for the learned Civil Judge to decide the Suit in accordance with law and with expedition, considering the age and health status of original defendant Nos.2 and 6;

e] Upon conclusion of evidence as aforesaid, the learned Civil Judge to dispose of Special Civil Suit No.28 of 2014, within a period of two months;

f] All parties to cooperate in the matter of expeditious disposal of the Suit.

8] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

9] Parties to act upon an authenticated copy of this order.

(M. S. SONAK, J.)