

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

Writ Petition No.8377 of 2016

* Bharatbai w/o Bhagwanrao Naikwade
Age 50 years,
Occupation : Household,
R/o Nilanga, Taluka Nilanga,
District Latur. **.. Petitioner.**

Versus

- 1) Pandurang @ Rajkumar s/o Bhagwan
@ Baburao Naikwade,
Age 39 years,
Occupation: Agriculture,
R/o Shivaji Nagar, Nilanga,
Taluka Nilanga, District Latur.
- 2) Vimalbai w/o Bhagwanrao Naikwade,
Age 48 years,
Occupation: Household,
R/o Shivaji Nagar, Nilanga,
Taluka Nilanga, District Latur. **.. Respondents.**

(Respondent Nos.3 to 69 are deleted as
per Court order dated 3-8-2016)

Shri. P.V. Ambade, Advocate, for petitioner.

Shri. R.S. Deshmukh, Advocate, for respondents 1 & 2.

CORAM: T.V. NALAWADE, J.

DATE : 31st AUGUST 2016

JUDGMENT:

1) Rule. Rule made returnable forthwith. Heard both the sides for final disposal.

2) The petition is filed to challenge the order made on Exhibit 363 in Regular Civil Suit No.164/2004 which is pending in the Court of the Civil Judge, Senior Division, Nilanga. This application was filed by defendant No.1, present petitioner, for setting aside two orders made against her as under :

(i) The “No Cross” order in respect of evidence of the defendant No.1; and,

(ii) The evidence closure order as against defendant No.1.

3) The trial Court has rejected the application by holding that no due diligence was shown and even when the order was made in the year 2009, no steps were taken for getting that order set aside.

4) The subsequent order i.e. of the closure of the evidence of defendant No.1 was made on 6-1-2015. The

submissions made show that original plaintiff, present respondent No.1 Pandurang Naikwade had come to this Court as his application for amendment of the plaint was rejected and in Writ Petition No.2439/2011 this Court had made interim order and the proceeding before the trial Court was stayed. The said writ petition came to be allowed on 14-7-2014 and this Court allowed the plaintiff to make amendment and the plaintiff is allowed to include following portion in the plaint :-

"6-A. The defendant No.1 having no interest and right in the suit land had illegally executed sale deeds in the name of several persons, therefore, those persons who have got invalid sale deeds from the defendant No.1 in respect of suit land have illegally occupied some portions out of suit land from the year 1996 onwards. Those persons have been impleaded to this suit as defendants No.3 onwards and all these defendants have got no right and interest in the suit land, they are illegally in possession of the suit land, therefore, they are also liable to be evicted from the suit land."

5) This Court has carefully gone through the case of the plaintiff and the defence taken by defendant No.1. The plaintiff is contending that defendant No.1 was not legally wedded wife of his father Bhagwan and only Vimalbai, mother of the plaintiff was legally wedded wife of Bhagwan. This contention is denied by defendant No.1

and she has denied the legality of the marriage of Vimalbai with Bhagwan. There is one more circumstance. The plaintiff has challenged the so called relinquishment document executed by defendant No.2 viz. his mother in favour of defendant No.1 Bharatbai. It appears that Bharatbai has sold the property to other defendants and so the other defendants are added in the suit. Thus the defences of all the defendants rest on the case of the defendant No.1. If she succeeds, all the defendants are likely to succeed and if she fails, the plaintiff succeeds against all the defendants. In view of these circumstances, this Court holds that the trial Court ought to have allowed the application filed by the defendant No.1 of the aforesaid nature. No prejudice will be caused to the plaintiff as he will have the opportunity to further cross examine defendant No.1 and if she examines some witnesses he will have opportunity to cross examine those witnesses also. In view of these circumstances this Court holds that the petition needs to be allowed. In the result, following order is made:

6) The writ petition is allowed. The order made by the learned Civil Judge, Senior Division, Nilanga on Exhibit 363 is hereby set aside. The said application is allowed and the relief as prayed in the said application is granted. "No cross" order made on the evidence of the defendant No.1 is set aside. Similarly the order of closure of evidence of defendant No.1 is hereby set aside. The trial Court is expected to dispose of the suit itself within six months from the date of receipt of this order. Rule is made absolute in those terms.

Sd/-
(T.V. NALAWADE, J.)

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