

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

928 WRIT PETITION NO. 10135 OF 2015

JANKABAI JAIRAM LATE LRS BHAUSAHEB AND OTHERS
VERSUS
SUMANBAI RAMA KOTKAR LRS ASHA SHRIRAM MARKAD AND
OTHERS

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Advocate for Petitioners : Mr. N. V. Gaware
Advocate for Respondent Nos.1(a) to 1(c) : Mr. A. K. Gawali

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CORAM : V. K. JADHAV, J.

DATED : 09th FEBRUARY, 2016

PER COURT :-

1. By consent of learned counsel for the parties, heard finally at admission stage.
2. Respondents/original plaintiffs instituted a suit bearing RCS No.149 of 2004 for partition and separate possession with regard to the suit property. Since respondent No.1(a)/original plaintiff remained absent for her cross-examination, trial court has passed order of closure of her evidence. Aggrieved by the same, respondent No.1(a)/original plaintiff filed application Exh.76 for setting aside the said order. The said application was strongly resisted by petitioners/defendants. However, the learned judge of the trial court, by impugned order passed below Exh.76, allowed the said application with costs. Hence this writ petition.

3. Learned counsel for petitioners/original defendants submits that the suit is of the year 2004 and in the year 2004 itself, the issues are framed. Learned counsel further pointed out that on 18.01.2011, respondent/plaintiff filed affidavit of evidence at Exh.35. However, she remained absent continuously thereafter, and therefore, learned Judge of the trial court passed order of closure of evidence on 19.12.2012. Consequently, respondent/plaintiff filed application Exh.48 dated 17.01.2013 for setting aside the said order and accordingly, the trial court has allowed the said application by order dated 27.02.2013. Thereafter, on 16.03.2013, when the respondent/plaintiff was under cross-examination, her cross-examination could not be completed on the ground that she was suffering from illness and accordingly, next date was given as 06.09.2014. Learned counsel submits that even on 19.12.2014, the respondent/plaintiff and her counsel remained absent though called repeatedly and the trial court has again passed order of closure of evidence. Learned counsel submits that the trial court has again allowed the application Exh.76 with certain costs. Learned counsel submits that even though opportunities are repeatedly given to respondent/plaintiff, she remained absent for her cross-examination. The suit is of the year 2004 and in this way, even in the year 2016, due to non-cooperation by respondent/plaintiff, the same could not be disposed of.

4. Learned counsel for respondents/original plaintiffs submits that respondent No.1(a)/original plaintiff is an illiterate lady and due to her illness, she could not attend the court dates fixed for her cross-examination. Learned counsel submits that considering the same, the trial court has allowed her application Exh.76 by imposing certain costs. Learned counsel further submits that respondents/plaintiffs are ready to cooperate the trial court for disposal of the suit itself in a time bound manner.

5. It appears that though the affidavit of evidence of respondent/plaintiff was filed on 18.01.2011 at Exh.35, the case is still pending for cross-examination of respondent/plaintiff. The suit is of the year 2004 and in the year 2004 itself, issues are framed. Since the suit is instituted for partition and separate possession, and since the cross-examination of respondent/plaintiff is necessary in the interest of petitioners/defendants, and also for just decision of the case, I do not intend to interfere in the order impugned in this writ petition. However, care can be taken by directing the trial court to dispose of the suit expeditiously. Hence the following order :

O R D E R

- I. The writ petition is hereby dismissed. No costs.
- II. The trial court is hereby directed to dispose of Regular

Civil Suit No. 149 of 2004 within a period of three (3) months from the date of receipt of this order. Needless to state that the petitioners and the respondents shall cooperate the trial court for expeditious disposal of the suit.

(V. K. JADHAV, J.)

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