

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11289 OF 2015

ASHOK NANDU PACHORE AND OTHERS
VERSUS
NARHARI NANDU PACHORE

.....

Advocate for the petitioners: Mr. S.S. Chapalgaonkar

Advocate for respondent: Mr. S.B. Kadu-Patil

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CORAM : V. K. JADHAV, J.
DATED : 4th FEBRUARY, 2016

PER COURT:-

1. By consent of learned counsel for the parties, heard finally.
2. The petitioners-original defendants have challenged the order passed by the trial court dated 15.9.2015 below Exh.56 in R.C.S. No. 59 of 2010. The petitioners-defendants filed an application for setting aside "no cross order". Accordingly, the order of no cross was set aside on 1.8.2015, subject to cost of Rs.500/-. The petitioner therefore, filed an application Exh.56 for permitting the petitioners-defendants to deposit the costs. However, the trial court has rejected the said application. Hence this writ petition.
3. Learned counsel for the petitioners submits that as per order passed by this Court, the petitioners-original defendants have deposited an amount of Rs.25,000/- in this Court. The counsel

submits that the respondent-plaintiff instituted the suit for partition and separate possession of the landed property. Learned counsel submits that by imposing the cost the application Exh.56 may be allowed.

4. Learned counsel for the respondent submits that the suit is of the year 2010 and the petitioners-defendants are playing tactics to prolong the matter and therefore, learned Judge of the trial court has rejected application Exh.56. Learned counsel, in the alternate, submits that entire costs of Rs.25,000/- be paid to the respondent-original plaintiff.

5. Since the suit is for partition and separate possession, I am inclined to allow the application Exh.56 filed before the trial court subject to payment of costs of Rs.15,000/-. Hence, the following order:-

O R D E R

I. The order dated 15.9.2015 passed below Exh.56 in R.C.S. No. 59 of 2010 is hereby quashed and set aside.

II. The application Exh.56 is hereby allowed subject to costs

of Rs.15,000/-. Respondent-original plaintiff is permitted to withdraw the amount of Rs.15,000/- deposited in this Court.

III. The petitioners-defendants are permitted to withdraw the remaining amount of Rs.10,000/- deposited in this Court.

IV. The parties shall appear before the trial court on 8.3.2016.

V. Writ petition is disposed of in the above terms. No costs.

(V. K. JADHAV, J.)

rlj/