

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10787 OF 2015

BHASKAR BHUNDA PATIL AND OTHERS
VERSUS
HANSRAJ BUDHA PATIL

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Advocate for Petitioners : Shri Dawalkar P.P.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: May 02, 2016
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PER COURT :-

1. The petitioners, after issues were cast on 11.2.2013 in RCS No.117 of 2012, filed an application Exhibit 49 on 11.7.2014 praying for striking off issue No.2. Contention was that in an earlier suit for partition and separate possession, the entire suit properties has suffered partition. Issue No.2 was, therefore, not required and would impose unnecessary burden on the petitioner / defendants.
2. It is further submitted that the said issue was cast by the trial Court on the basis of a passing reference made in the Written Statement and hence, issue No.2 based on such a passing reference was not required to be cast. It is further stated that subsequently, both the father and the mother, namely, Budha and Jayawantabai have passed away, thereby, rendering issue No.2 redundant.
3. I have considered the submissions of the learned Advocate.
4. It has also been the contention of the petitioners that application Exhibit 49 was rejected without hearing the petitioners. The said application was to be argued on 15.6.2015. By application Exhibit 53, an adjournment was sought and the trial Court allowed the said application by passing an order, "Granted. Last chance."

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5. It, therefore, appears that the petitioners were not heard when their application Exhibit 49 was rejected by the impugned order on 15.6.2015. Learned Advocate for the petitioners submits that the adjournment application Exhibit 53 was filed in the morning and the matter was adjourned by the order of the Court and yet, thereafter, the trial Court proceeded to pass an order on application Exhibit 49, without hearing the petitioners.

6. The respondent has been served with Court notice on 17.12.2015. Thereafter, the matter has been adjourned and interim relief granted to the petitioners was continued. Office record indicates that the respondent has neither appeared in person nor filed his appearance.

7. The order passed on adjournment application Exhibit 53 is dated 15.6.2015 and the order indicates that the adjournment has been granted. Yet, the trial Court has decided application Exhibit 49, without hearing the petitioners. The petitioners do not state that Exhibit 49 was reserved only for orders. The petitioners specifically contend that they were yet to address the Court on Exhibit 49 and despite adjourning the suit on 15.6.2015, Exhibit 49 has been rejected by the order dated 15.6.2015.

8. In the light of the above, this petition is allowed. The impugned order dated 15.6.2015 is quashed and set aside. The learned Joint Civil Judge (S.D.), Sindhkheda is directed to hear the litigating sides on application Exhibit 49 in RCS No.117 of 2012 and decide the said application on its own merits.

9. It is made clear that this Court has not expressed any opinion on the merits of application Exhibit 49.

(RAVINDRA V. GHUGE, J.)

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