

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

WRIT PETITION NO. 12559 OF 2016

1. Kalpana Sudarshan Bakale
Age: 30 years, Occu.: Household,
R/o Sarola (Bk.), Tq. Osmanabad,
Dist. Osmanabad.
2. Priyanka Sudarshan Bakale
Age: 10 years, Occu.: Education,
Under Guardian of her real Mother
Kalpana Sudarshan Bakale
R/o Sarola (Bk.), Tq. Osmanabad,
Dist. Osmanabad.
3. Pranjali Sudarshan Bakale
Age: 06 years, Occu.: Education,
Under Guardian of her real Mother
Kalpana Sudarshan Bakale
R/o Sarola (Bk.), Tq. Osmanabad,
Dist. Osmanabad.

..PETITIONERS

VERSUS

1. Sujit Jivan Bakale
Age: 32 years, Occu.: Advocacy & Agri.,
R/o Sarol (Bk.), Tq. Osmanabad,
Dist. Osmanabad.
2. Sidhubai Jivan Bakale
Age: 56 years, Occu.: Agri. & Household,
R/o Sarol (Bk.), Tq. Osmanabad,
Dist. Osmanabad.
3. Jivan Tulshiram Bakale
Age: 61 years, Occu.: Agri.,
R/o Sarol (Bk.), Tq. Osmanabad,
Dist. Osmanabad.

..RESPONDENTS

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Mr. M.U. Shelke, Advocate for petitioners.
Mr. Ramraje Deshmukh, Advocate for respondents.
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CORAM : T.V. NALAWADE, J.
DATED : 21st DECEMBER, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard both sides by consent for final disposal.

2. The present proceeding is filed to challenge the order made on Exhibit 25 in Regular Civil Suit No. 77 of 2015 which is pending in the Court of Civil Judge, Senior Division, Osmanabad. The suit is filed by respondents for relief of partition. Defendant No.1 – Jivan is husband of present Respondent No.2 – Sindhubai and father of present Respondent No.1 – Sujit. Present petitioner – Kalpana is widow of deceased brother of Jivan. Petitioner Priyanka and Pranjali are minor issues of Kalpana borne from her deceased husband Sudharshan.

3. It appears that petitioners appeared in the suit on 12th March, 2015 but till 13th August, 2015, written statement was no filed and after that when No W.S. order was made, no further application given till

October, 2016. In view of this circumstance, the Trial Court has held that No W.S. order cannot be set aside.

4. As per the directions given by this Court, copy of written statement which was filed alongwith application at Exhibit 25 was produced. This Court has carefully gone through the pleading which the petitioners want to file. It is the case of the petitioners that there is apparent collusion between plaintiffs and Defendant No.1 and only to deprive the petitioners of their right in the joint Hindu family property, the suit is filed. There is mention of one sale deed executed and the contention is that the properties purchases were purchased from the income of joint Hindu family. As Kalpana – petitioner no.1 is widow and the other two petitioners are minor and the dispute is of aforesaid nature, this Court holds that opportunity needs to be given to the petitioners to get the decision on merits. The petitioners also contended in the written statement that new properties which need to be included in the suit are not included and they also need to be partitioned.

5. Though there are aforesaid circumstances, respondents/plaintiffs are required to spend on present proceeding. So this Court holds that the petitioners need to be made to pay some amount

to the plaintiffs. On this point learned Counsel for petitioner placed reliance on observation made by this Court in the case reported as 2912 (1) Bom.C.R. 912 (All India Engineering Co. Ltd. Vs. Tripa Sales Organization). The facts and circumstances of each and every case are always different. There is delay of more than one year caused in filing the written statement and that delay needs to be condoned.

6. In view of these circumstances, this Court holds that the petitioners need to be made to pay at least Rs.10,000/- to respondents / plaintiffs. In the result petition is allowed subject to deposit of amount of Rs.10,000/- (Rupees Ten Thousands Only) by present petitioners in the Trial Court on or before 06th January, 2017. If the amount is deposited, written statement is to be accepted. If the amount is not deposited, it is to be presumed that the present proceeding is dismissed and matter can go on from that stage. Plaintiffs are allowed to withdraw that amount if deposited. Rule is made absolute in those terms. The Trial Court is expected to expedite the suit and in any case within six months from the date of receipt of this order.

(T.V. NALAWADE, J.)

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