

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION*

WRIT PETITION NO. 6786 OF 2016

Iqbal Abdul-Latif Kagdi & ors.

... Petitioners

Vs

Jamila Riyajoddin Kagdi & ors.

... Respondents

Mr. Milind Sathaye, for Petitioners.

Mr. Sham Walve i/b Mr. S. P. Gorwadkar, for Respondent No.1.

***CORAM : N.M. Jamdar, J.
Tuesday, 6 September 2016.***

P.C. :

The Petitioners challenge the order passed by the Civil Judge Senior Division Nasik, dated 22 March 2016 rejecting an application Exhibit 355 in Special Civil Suit No.389 of 2008 for examination of relative of an advocate who is stated to have issued a notice for partition.

2. The Petitioners, who are Defendants, filed an application in the suit taking stand that in the year 1961, the Respondents-Plaintiffs had issued a notice for partition through an advocate and the notice was not pursued thereafter and therefore, the suit is not maintainable. It is the case of the Respondents-Plaintiffs that no such notice was issued. In the backdrop of this defence, an application was moved by

the Petitioners on 29 February 2016, to permit the Petitioners to examine a relative of the advocate, stated to have issued the notice. This application is rejected by the impugned order.

3. Heard learned counsel for the parties. The learned Civil Judge has proceeded on the basis that it is the Petitioners who have given the notice, which is not the case of the Petitioners. However, if the application filed by the Petitioners is seen it is bereft of any particulars. On the basis of such application wherein even the name of the witnesses is not specified, no prayer as sought for by the Petitioners could be granted. However, even though I am not inclined to interfere with the impugned order, considering the importance of the issue for both the parties, I am of the opinion that the issue need not be closed for lack of clear drafting on the part of the Petitioners-Defendants. If the Petitioners want to make out a case for examination of relative of an advocate, which is a rather unusual request, sufficient and cogent reasons must be stated in the application. The Petitioners will have to specify the name of the witnesses and in how and what circumstances such witness is able to depose regarding the signature of the deceased advocate. It is only if such clear pleadings are set out that the application of this nature can be considered. If such application is filed, it will be open to the Respondents to file their reply.

4. It is clarified that the above indulgence is without prejudice to contentions of the Respondents-Plaintiffs that no such notice was

issued at all, which is kept open to be considered at the time of trial of the suit. In view of this liberty it is not necessary to consider the Writ petition any further on merits. Writ petition is disposed of with above observations. The application if so filed, will be decided on its own merits.

(N.M.Jamdar, J.)