

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9909 OF 2015

Sumedha Sudam Kamthe ... Petitioner
Vs.
Sulochana Dnyanoba Darekar and others ... Respondents

Mr. Prabhakar M. Jadhav for Petitioner.
Mr. Gaurav Deshpande i/b. Mr. Nitin Deshpande for Respondents No.1 to 4, 6 and 7.

CORAM : R. G. KETKAR, J.
DATE : MARCH 21, 2016

P.C. :

Heard Mr. Jadhav, learned Counsel for petitioner and Mr. Deshpande, learned Counsel for respondents No.1 to 4, 6 and 7 at length. Rule. Mr. Deshpande waives service for respondents No.1 to 4, 6 and 7. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 06.03.2013 below exhibit-15 as also the judgment and order dated 12.03.2015 below exhibit-33 in Special Civil Suit No.782 of 2012 passed by the learned Civil Judge, Senior Division, Pune. By order dated 06.03.2013, the learned trial Judge dismissed the application made by the petitioner, hereinafter referred to as defendant No.1, for condoning the delay in filing the written statement and taking the written statement on record. By order dated 12.03.2015, the learned trial Judge dismissed the review application filed by defendant No.1 for reviewing order dated 06.03.2013.

3. Respondent No.1, hereinafter referred to as plaintiff, has instituted Suit for partition and separate possession of her 1/5th share. Plaintiff has also challenged the gift deed dated 07.02.2007 executed by Swati Tisgaonkar, since deceased, in favour of defendant No.1.

4. Defendant No.1 appeared suo motu on 05.07.2012. The Suit was thereafter fixed on 26.02.2012 and 18.10.2012. On these dates, defendant No.1 remained absent. On 18.10.2012, the learned trial Judge directed Suit to proceed without written statement of defendant No.1. Defendant No.1, therefore, took out application on 23.11.2012 for setting aside 'No W.S. order' as also for taking on record written statement affirmed on 23.11.2012. The learned trial Judge rejected the application on 06.03.2013 and the review application was also dismissed on 12.03.2015.

5. Mr. Jadhav invited my attention to the reply dated 17.12.2012 filed by the plaintiff to the application exhibit-15. Though the plaintiff contended that reasons given in the application are not acceptable, the application may be allowed subject to payment of cost.

6. Having regard to the fact that No W.S. order was passed on 18.10.2012 and the defendant No.1 made application on 23.11.2012 enclosing therewith written statement, in my opinion, the learned trial Judge should have permitted defendant No.1 to file written statement subject to imposing cost. If defendant No.1 is not permitted to file written statement, she will not be in a position to effectively contest the Suit by leading evidence.

7. In view thereof, the impugned orders are set aside subject to defendant No.1 paying cost of Rs.15,000/- to the plaintiff or depositing

the said cost in the trial Court within 2 weeks from today. If the cost is to be deposited, the same shall be done under due intimation in writing to the plaintiff's Advocate. Rule is made absolute in the aforesaid terms. Order accordingly.

(R. G. KETKAR, J.)

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