

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4940 OF 2016

DRAUPADABAI DAGADU GADHAVE AND OTHERS
VERSUS
DINKAR LIMBRAJ PADWAL DIED THROUGH LRS

...

Advocate for Petitioners : Shri Shaikh Shoyab
Advocate for Respondents 1A to 1D & 3 : Shri V.S.Undre

...

CORAM : RAVINDRA V. GHUGE, J.
Dated: December 07, 2017

...

PER COURT :-

1. By this petition, the petitioners, who are original plaintiffs, seek to challenge the order dated 25.11.2015 and 4.2.2016, passed by the trial Court in RCS No. 247 of 2011.

2. I have considered the submissions of the learned Advocates for the petitioners and respondent Nos.1A to 1D and 3. Rest of the respondents, through served, have not chosen to enter their appearance in this matter.

3. The grievance of the petitioners is that on 25.11.2015, the trial Court passed an order thereby closing the evidence of the petitioners / plaintiffs. Prior to the passing of this order, the

petitioners had sought two adjournments and it was on the third adjournment that the said order was passed.

4. The petitioners preferred application Exhibit 70 on 18.12.2015, which is within 30 days from the passing of the evidence closing order. By the impugned order dated 4.2.2016, the trial Court has concluded that the suit involves immovable properties and sufficient explanation is not putforth by the plaintiffs for allowing Exhibit 70. It was concluded that as the reasons cited are not satisfactory, Exhibit 70 has been rejected.

5. The learned counsel for some of the respondents has strenuously opposed this petition. In the alternative, it is prayed that heavy costs may be imposed on the plaintiffs, if this Court is inclined to allow the petition.

6. I find that the closing evidence order was passed after two adjournments. It cannot be said that the passing of the said order could be termed as being perverse. However, as the plaintiffs had moved an application within 30 days for seeking the recalling of the said order, the trial Court could have imposed costs on the plaintiffs, in order to ensure that the plaintiffs would suffer for the delay caused and at the same time, the ends of justice would be met by

permitting the plaintiffs to lead evidence since the suit involves immovable properties. Depriving the plaintiffs an opportunity to lead evidence may cause the loss of the immovable property.

7. Considering the above, this petition is partly allowed. The impugned order dated 4.2.2016 is quashed and set aside. Application Exhibit 70 is allowed and the order dated 25.11.2015 is set aside subject to the imposition of costs of Rs. 10,000/-. The said amount which is already deposited in the trial Court under the order of this Court, dated 2.5.2016, be withdrawn only by respondents 1A to 1D and 3, who have appeared in this matter.

(RAVINDRA V. GHUGE, J.)

...

akl/d