

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6463 OF 2014

1. Nimba S/o. Mahadu Dhangar,
Age : 60 yrs., Occu. Agri.,
2. Parvatibai W/o. Mahadu Pardeshi,
Age : 81 yrs., Occu. Nil,
3. Bapu S/o. Zipru Pardeshi,
Age : 68 yrs., Occu. Agri.,

All R/o. Kusumba,
Tq. and Dist. Dhule.

...Petitioners.

Versus

1. Ratnabai D/o. Adhar Pardeshi,
Age : 32 yrs., Occu. Household,
R/o. Kusumba, Tq. & Dist. Dhule.
2. Sau Indirabai W/o. Adhar Pardeshi,
Age : 51 yrs., Occu. Household,
R/o. As above.
3. Indirabai W/o. Uttam Pardeshi,
Age : 74 yrs., Occu. Household,
R/o. As above.
4. Lilabai Pandit Pardeshi,
Age : 71 yrs., Occu. Household,
R/o. As above.
5. Smt. Latabai Dilip Pardeshi,
Age : 45 yrs., Occu. Household,
R/o. As above.

6. Sachin Dilip Pardeshi,
Age : 22 yrs., Occu. Nil,
R/o. As above.
7. Ku. Pallavi Dilip Pardeshi,
Age : 19 yrs., Occu. Household,
R/o. As above.
8. Shobhabai Raghunath Pardeshi,
Age : 43 yrs., Occu. Household,
R/o. C/o. Raghunath Vedu Pardeshi,
Kusumba, Tq. & Dist. Dhule.
9. Shri. Tuljabhavani Trust,
Through President Gulabrao
Jayantrao Khairnar,
Raje Sambhaji Public School,
Morane, Tq. & Dist. Dhule. ...Respondents.

Advocate for Petitioners : Shri K.C. Sant.
Advocate for Respondent Nos. 1 & 2 : Shri C.R. Deshpande.
Respondent Nos. 5 & 7 dismissed as per Hon'ble Court's Order
dated 05/10/2016.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 20th June, 2017

ORAL JUDGEMENT :-

1. Rule. Rule made returnable forthwith and heard finally by
the consent of the parties.

2. The petitioners are aggrieved by the order dated 29/04/2014, by which, the Trial Court has ordered the closure of the recording of oral evidence of the petitioners / defendants in R.C.S. No. 288/2000.

3. I have heard the strenuous submissions of Shri Sant and Shri Deshpande, learned advocates for respective sides and have gone through the petition paper book with their assistance.

4. The petitioners could not justify the delay caused by them in these proceedings before the Trial Court. Despite granting several opportunities, the petitioners did not lead evidence and after giving them reasonable opportunities, the Trial Court has passed the impugned order, keeping in view that even the advocate representing the petitioners did not file an application seeking adjournment.

5. Principally, what Shri Sant submits, may appear to be correct that if the impugned order is sustained, an opportunity of proving the averments in the written statement would be lost

forever. However, it cannot be lost sight of, that the petitioners are before this Court for the second time. Earlier, the petitioners had approached this court in Writ Petition No. 490/2008, contending that the Trial Court, in the same R.C.S. No. 288/2000, between the same parties, had rejected the application of the petitioners for issuing summons to the witnesses which they desired to examine.

6. It would be apposite to reproduce the observations of this Court in paragraph No. 2 to 7 as under :

“2. By way of present petition, the petitioners have challenged the order dated 5th December 2007 passed by the learned Vth Civil Judge (Junior Division), Dhule, below Exhibit 164 in Regular Civil Suit No. 288/2000, thereby rejecting the application filed by the present petitioners for issuing summons to the witnesses which the petitioners desire to examine.

3. The respondents have filed a suit for partition and declaration that the sale deeds executed by the defendant nos.1 and 2 in favour of defendant nos.3 and 4 are null and void. After closure of evidence of the plaintiffs, an application came to be filed by the present petitioners for examining the Manager of the State Bank

of India and one Bhika Mahadu Pardeshi as their witnesses. It is the case of the said defendants that the alienation of the suit property was for legal necessity and as such, it was necessary to examine the said witnesses. The said application came to be rejected. Hence, the present petition.

4. Mr. A.B. Girase, learned Counsel appearing for the petitioners, submits that the trial court has grossly erred in rejecting the application. He submits that it was in the interest of justice that the trial court ought to have allowed the said application.

5. Mr. C.R. Deshpande, learned Counsel appearing for the respondents, on the contrary, submits that though ample opportunity was given to the petitioners, they failed to avail of the same and as such, application is rightly rejected.

6. From the perusal of the record, it cannot be said that there was any deliberate attempt on the part of the petitioners to prolong the matter. In any event, I am of the considered view that instead of foreclosing the doors of justice to the petitioners on technical ground, it would be in the interest of justice to permit the parties to settle their disputes on merits. In that view of the matter, I am inclined to allow the petition.

7. Hence, the petition is allowed.

(i) The impugned order dated 5th December 2007

passed by the learned Vth Civil Judge (Junior Division), Dhule, below Exhibit 164 in Regular Civil Suit No. 288/2000, thereby rejecting the application filed by the present petitioners for issuing summons to the witnesses named in the application, is quashed and set aside.

(ii) The application of the present petitioners for issuing summons to the aforesaid two witnesses is allowed. However, the same shall be subject to the costs which are quantified at Rs. 3,000/- [Rupees three thousand]. The costs be deposited in the trial court by the petitioners within a period of three weeks from today. On deposit of the said costs, the respondents / plaintiffs shall be entitled to withdraw the same.

(iii) On failure to deposit the costs by the petitioners within the stipulated period, the petition shall stand dismissed and the impugned order of the trial court shall stand restored automatically.

(iv) Since the suit is of the year 2000, the trial court is directed to expedite hearing of the suit and dispose of the same on merits, as expeditiously as possible and preferably within a period of six months from today. “

7. The petitioners were saddled with costs of Rs. 3,000/- in Writ Petition No. 490 of 2008, vide the order dated 12/11/2008, passed by this Court. Even after passage of nine years, the

petitioners have failed to lead evidence. The plaintiffs have amended the plaint in 2012 and thereafter, the petitioners tried to lead evidence. However, the recording of the evidence of the plaintiffs was concluded on 25/06/2012 and till the passing of the impugned order dated 29/04/2014, the petitioners had not led evidence. It is only because this Court had stayed the suit by granting ad-interim relief in terms of prayer clause 'C' that for the last three years, the suit has not progressed.

8. Shri Deshpande, vehemently submits that this is one peculiar case wherein no sympathy deserves to be shown towards the petitioners. He submits that two of the respondents are beyond 75 years of age and some of them have crossed 50 years of age. He, therefore, prays that this petition be dismissed with costs and the suit be expedited.

9. I find from the earlier order of this Court dated 12/11/2008, passed in Writ Petition No. 490/2008, that the suit was expedited and directed to be disposed of within six months. For the last nine years, the suit has till not been

disposed off. Considering the above and in order to give a last chance to the petitioners, this petition is partly allowed. The impugned order dated 29/04/2014 is set aside on the following conditions :

(a) The petitioners jointly or severally shall deposit an amount of Rs. 15,000/- before the Trial Court on / or before 15/07/2017, as a precondition for adducing evidence. If the said amount has not been deposited, this order shall stand recalled and the impugned order shall stand restored.

(b) The petitioners would not seek extension of any time for depositing the money and such a request shall not be entertained.

(c) The litigating sides shall appear before the Trial Court on 15/07/2017, and the petitioners shall commence the recording of their oral evidence on the said date, failing which this order shall stand recalled and the impugned order dated 29/04/2014, shall stand restored.

(d) The petitioner shall complete the recording of their oral evidence in between 15/7/2017 and 16/09/2017 i.e.

two months. They shall submit a list of witnesses on 15/07/2017, and the recording of oral evidence of their witnesses would be completed on / or before 16/09/2017. No request for extension of time would be entertained.

(e) The petitioners are precluded from seeking adjournment and in the event the Trial Court is inclined to grant an adjournment, the same would be subject to cost of Rs. 1,000/- to be imposed on the defendant who will seek an adjournment. Payment of such costs would be precondition for granting adjournment.

(f) The Trial Court shall decide R.C.S. No. 288/2000, after recording the oral evidence of the parties on 16/09/2017, expeditiously, and in any case on / or before the 30/11/2017. The Trial Court would be at liberty to refuse adjournments in order to ensure that the above time frame directions are complied with.

(g) After the costs of Rs. 15,000/- are deposited, the plaintiffs would be at liberty to withdraw the said amount in equal proportion. Same principle shall apply for withdrawal of any further costs, if are to be deposited by

the defendant, in the light of the above, directions.

10. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

S.P.C.