

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

WRIT PETITION NO. 6261 OF 2014

1 Sau.Sudhatai Shrikrishna Kand,
 Age : 70 years, Occupation : Agriculture.

2 Shrikrishna V. Kand,
 Age : 75 years, Occupation : Agriculture.

Both R/o Chintamani Bunglow,
Savarkar Nagar, Gangapur Road,
Nashik.

Petitioner Nos.1 and 2 through
GPA Vijay Vamanrao Deshmukh,
Age : 64 years,
Occupation : Agriculture,
R/o Brahman Gaon,
Taluka Kopargaon,
District Ahmednagar.

...PETITIONERS
(Original Defendants)

-VERSUS-

1 Vishwanath Narayan Patel,
 deceased through L.Rs.
 A) Deelip Vishwanath Patel,
 Age : 64 years,
 Occupation : Agriculture.

 B) Pushkar Deelip Patel,
 Age : 25 years,
 Occupation : Agriculture,
Both R/o Laxminarayan Road,
Yeola, District Nashik.

...RESPONDENTS
(Original Plaintiffs)

...
Advocate for the Petitioners : Shri Kulkarni Sanket S..
Advocate for the Respondents : Shri C.S.Tembhurnikar.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 14th December, 2017

Oral Judgment :

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

2 The Petitioners, by this petition, have put forth prayer clauses (B) and (C) as under:-

"(B) Quash and set aside the order passed below Exhibit 1 dated 17.06.2014 and order passed below Exhibit 95 dated 11.07.2014 in Regular Civil Suit No.231/2000 on the file of Civil Judge Junior Division, Kopargaon, District Ahmednagar.

(C) Pending hearing and final disposal of the writ petition, grant stay to the order passed below Exhibit 1 dated 17.06.2014 and order passed below Exhibit 95 dated 11.07.2014 in Regular Civil Suit No.231/2000 on the file of Civil Judge Junior Division, Kopargaon, District Ahmednagar."

3 I have considered the strenuous submissions of the learned Advocates for the respective sides.

4 The learned Advocate for the Respondents has prayed that this petition be dismissed with heavy costs and the suit be expedited.

5 The issue raised in this petition is with regard to the Defendants seeking to examine the Taluka Inspector of Land Records (TILR) with regard to the report that he had submitted in connection with the measurement of the suit properties. The summons were issued by the Trial Court in RCS No.231/2000. However, on 01.04.2014, a purshis was filed on behalf of the office of the TILR, informing the Court that the concerned TILR, who has measured the land, has passed away. Thereafter, the matter was adjourned to 19.04.2014 and then to 10.06.2014 and 17.06.2014. By order dated 17.06.2014, the evidence of the Petitioners/ Defendants was closed and the matter was posted for final arguments.

6 The Petitioners/ Defendants preferred an application Exhibit-94 on 17.06.2014 praying for extension of time. It was not brought to the notice of the Court that Defendant No.1 had met with an accident, which was averred for the first time in Exhibit-95. The Trial Court has rejected Exhibit-94 by the order dated 17.06.2014 for the reason that the suit was pending for almost 14 years and the Defendants were not adducing evidence.

7 I find from the record that the Plaintiffs closed the recording of their evidence on 17.02.2014. So, it was after 14 years, that the evidence of the Plaintiffs was closed. In this backdrop, the Trial Court's observation that the Defendants are delaying the suit, which is pending for 14 years, is an attribute which cannot be attributed to the Defendants. The

Defendants legitimately got a right to lead evidence on 26.02.2014 when the summons were issued to the TILR. The purshis was filed on 01.04.2014 by the office of the TILR informing about his demise. The month of May was a period of vacation and it was on 17.06.2014, after reopening, that the Trial Court has closed the evidence of the Defendants.

8 Notwithstanding the above, it cannot be ignored that the Defendants could have moved an application on 01.04.2014 or 19.04.2014 that they would take steps for seeking summons to any other officer from the office of the TILR to lead evidence on the basis of the record. That has not been done.

9 Insofar as the accident of Defendant No.1 is concerned, certain medical records have been placed before this Court to indicate the injuries suffered by Petitioner No.1/ Defendant No.1.

10 In order to meet the ends of justice and to ensure that every litigating side gets an opportunity of pleading and supporting his case with oral and documentary evidence, I am of the view that this petition can be allowed by imposing costs on the Petitioners.

11 The learned Advocate for the Respondents submits that the costs may be donated to the Advocate Association's Bar Library, High Court, Aurangabad.

12 Considering the above, this Writ Petition is partly allowed. The order dated 11.07.2014 is quashed and set aside and the application

Exhibit-95 is allowed. The order dated 17.06.2014 closing the evidence of the Defendants is set aside on the following conditions:-

- (a) The Petitioners shall deposit costs of Rs.5000/- (Rupees Five Thousand) with the Advocate Association's Bar Library, High Court, Aurangabad on or before 15.01.2018 and produce a copy of the receipt of deposit before the Trial Court on or before 20.01.2018.
- (b) The Petitioners/ Defendants shall step into the witness box for leading their oral evidence or through an affidavit in lieu thereof, on or before 20.01.2018 and shall not seek an adjournment.
- (c) Simultaneously, if the Petitioners/ Defendants desire to examine any competent officer from the office of the TILR with regard to which the summons were earlier issued to the TILR, they may do so by filing an application on or before 20.01.2018 which may be dealt with by the Trial Court independently and this will not be a ground for evading the recording of oral evidence of the Defendants on or before 20.01.2018.
- (d) If any of the above stated conditions are not complied with by the Petitioners/ Defendants, the Trial Court shall proceed to hear the arguments of the litigating sides finally and the order

dated 17.06.2014 shall then become operative.

13 Rule is made partly absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)