

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

WRIT PETITION NO. 10096 OF 2013

Sou. Suman Vinayak Kamble & anr. ... Petitioners.
Versus
Tanaji Ananda Thorat & ors. ... Respondents.

Mr. Kalpesh Patil, advocate for petitioners.

Ms. Priyanka V. Bagat, advocate for respondent No. 7.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : NOVEMBER 27, 2017**

P.C.:

1 Heard the learned Counsel for the Petitioners and the learned Counsel for the respondent No. 7.

2 Rule. Rule made returnable forthwith with the consent of the parties.

3 The Petitioners herein happen to be the legal heirs of original plaintiff in RCS No. 408 of 1987 pending before the Civil Judge, J.D.,

Karad. The suit was initially filed against the defendant Nos. 1 and 2 i.e. respondent Nos. 1 and 2. However, after institution of the suit, the original defendant Nos. 1 and 2 had created third party interest without prior permission of the court in favour of the original defendant Nos. 3 to 19. In view of this, it was necessary to implead third parties to the suit and amendment was carried out to that effect pursuant to an order dated 15/2/2008. The summons were served upon the defendants and the plaintiff had filed the process fees also. It appears that on 16/6/2008 the original defendant Nos. 6 and 7 had filed an application before the court submitting therein that the plaintiff had not served the documents upon the defendants. However, it was submitted that the defendant Nos. 6 and 7 had received the copies of Exh. 1 and Exh. 79. It was also submitted that in view of the same, the defence could not file their written statement and hence, prayed that by virtue of order 7 rule 14, suit shall be dismissed as against the original defendant Nos. 6 and 7. The said application was allowed by the trial Court on 5/9/2008.

4 It appears that there was change in the advocate representing the plaintiffs and therefore, there was a delay in filing an application requesting the court to restore the suit as against the defendant Nos. 6 and 7. The Petitioner had filed an application on 12th March, 2012 requesting the court to set aside the order dated 5/9/2008. The learned Court by an order dated 22/10/2012 had rejected the application below Exh. 221. The learned Court had observed that the plaintiffs had not filed reply to the application filed by the defendant Nos. 6 and 7 and hence, the court had allowed the said application. In fact, it was incumbent upon the court to assign reasons for allowing the said application. It was also incumbent upon the court to verify as to whether the copy of the plaint was served upon the defendants. However, the same was not verified. It is true that the plaintiffs had filed an application seeking review. The fact that no reasons were assigned for allowing the application. The application for review of the said order was not maintainable. It would be sufficient for the plaintiffs to file an application seeking relief of setting aside the said order and permitting them to file their say.

5 Order 7 Rule 14 reads thus :

“14. Documents relied on in Plaint.- Production of document on which plaintiff sues or relies -

(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such documents not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to document produced for the cross examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory.”

6 In fact, the suit has been pending for almost 30 years. Court cannot be oblivious of the status of the plaintiffs. It is an admitted position that after having knowledge of the institution of the suit, the defendants had created third party interest in favour of the defendant Nos. 3 to 19. It is in these circumstances that the order dated 23/10/2013 deserves to be quashed and set aside. The court had not assigned any reasons for dismissing the suit as against the defendant

Nos. 6 and 7 are concerned. In fact, the said application was not maintainable under Order 7 Rule 14.

7 In view of this, Writ Petition is allowed. The impugned orders dated 5/9/2008 and 22/10/2012 are hereby quashed and set aside. The learned Civil Judge, J.D., at Karad shall restore the suit as against the defendant Nos. 6 and 7 and proceed with the suit expeditiously and conclude recording of evidence as far as possible by 30th May, 2018. The learned Court shall not grant any unwarranted adjournments either to the plaintiffs or the defendants and proceed with the suit against all the defendants in accordance with law.

8 Rule is made absolute in the above terms. The petition stands disposed in the above terms.

(SMT. SADHANA S. JADHAV,J)