

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

WRIT PETITION NO. 9966 OF 2017

Dattu Danyu Patil & ors. ... Petitioners.
Versus
Vilas Baburao Dudhane. ... Respondent.

Ms. Aditi S. Naikare i/b. Mr. Suryajeet P. Chavan, advocate for petitioners.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : OCTOBER 5, 2017**

P.C.:

1 Heard the learned Counsel for the Petitioner.

2 Rule. Rule made returnable forthwith.

3 The Petitioner herein being aggrieved by the order dated 8/10/2015 has filed present Writ Petition. The Petitioner happens to be the Appellant in Civil Appeal No. 185 of 2008. The Petitioner herein was original plaintiff in RCS No. 195 of 1994. The suit was dismissed by an order dated 25/3/2008. The Petitioner had

challenged the Judgment and Order by filing Regular Civil Appeal No. 185 of 2008 before the District Judge at Sangli. It is pertinent to note that the notices were issued on 12/6/2008.

4 On 27/8/2015 the petitioner i.e. the appellant filed an application under Order 47 Rule 27 read with Section 115 of the Code of Civil Procedure, 1908. The Petitioner herein had sought to place on record the original map filed in RCS No. 195 of 1994. It was contended that the Petitioner was suffering from mental illness and therefore, the wife of the Petitioner required some time to file the application. According to the Petitioner, he had not followed as to whether first map was read in evidence or not. It was therefore, prayed that the Petitioner be permitted to examine some government servant to prove the said map in the interest of justice.

5 The said application was rejected by an order dated 8/10/2015 i.e. within 2 months from the date of filing of the said application. However, the present petition has been filed on 7/9/2017. On 11/9/2017 this Court (Coram : M.S. Sanklecha, J) had

passed an order - "No urgency, stand over as per CMIS Date i.e. 08/03/2018." The matter was mentioned on 4/10/2017 pressing extreme urgency on the ground that the appeal is scheduled for Judgment on 26/10/2017 and therefore, urgent orders setting aside the impugned order were solicited.

6 This Court cannot be oblivious of the fact that although the suit was filed in the year 2008, the application for summoning witnesses was filed in the year 2015. The contention raised by the Petitioner that the Petitioner had not followed as to whether the said map was relied upon or not cannot be considered since the specific contention was raised in the memorandum of appeal stating therein that the learned trial Court has not properly considered the evidence adduced by the original plaintiffs i.e. the map of Gat No. 122 and 121 which clearly demarcates encroached portion. The ground No. 15 also reads as - "The learned lower court wrongly considered that the plaintiff has to show encroachment as per survey map dated 25/05/1994." Similar contention regarding the map is raised in ground No. 16.

7 The application was filed after 7 years and was decided within 2 months. However, there is a delay of more than 2 years in filing the present Writ Petition under Article 227 of the Constitution of India. The Petition suffers from delay and latches. Hence, the Petition stands dismissed for the reasons stated above as well as on merits. Rule is discharged.

8 Office to communicate this order to the concerned Court i.e. Principal District Judge, Sangli forthwith.

(SMT. SADHANA S. JADHAV,J)