

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 840 OF 2018
WITH
CIVIL APPLICATION NO. 1138 OF 2018

DR. ASHOK PURUSHOTTAM JHUNJHUNWALA
VERSUS
CHANDABAI GULABSING RAJPUT AND OTHERS

Advocate for Petitioners : Shri R.R. Chandak
h/f. Shri R.A. Karma.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 29th January, 2018

PER COURT :

1. This matter was heard on 24/01/2018. When this Court expressed an opinion that the impugned order is not perverse and erroneous and the petition will be dismissed, learned counsel for the petitioner Shri Chandak, submitted that the matter be adjourned, so as to take instructions for withdrawal.

2. Today at 10.30 a.m., Advocate Rahul Totala mentioned that a Civil Application has been filed in a matter which is on the board. He did not disclose that it was this very matter which was posted for taking instructions for withdrawal. Apparently, he has mentioned under instructions of Shri Chandak.

3. Despite the above, I have taken up the Civil Application along with this Writ Petition treating it to be an amendment for addition of grounds to the Writ Petition and I have heard the learned counsel for the petitioner whose submissions can be summarized as under :-

(a) The suit property is not 51 Acres, but is only 51 Ares which is under the CIDCO Development Act, Golwadi in District Aurangabad.

(b) Initially there were only three defendants.

(c) After defendant No. 1 passed away, defendant Nos. 2 and 3, became defendant Nos. 1 and 2.

(d) The application filed by the petitioner/plaintiff praying for bringing the LR.s. of deceased Gulabsingh on record was allowed on 18/11/2009.

(e) After defendant Nos. 3 and 4, who are LR.s. of Gulabsingh, were brought on record, the plaintiff was again permitted to add defendant Nos. 5 to 8.

(f) On 16/08/2012, the amendment to add parties was allowed and defendant No. 9 was permitted to be added.

(g) Defendant Nos. 3, 4 and 9 appeared through an advocate Shri A.U. Nikam, who subsequently passed away.

(h) 'No WS' order was passed by the Trial Court against defendant Nos. 3, 4 and 9 on 10/03/2014.

(i) The defendants cross-examined the plaintiff.

(j) Application Exhibit 175, was filed through the new advocate by defendant Nos. 3, 4 and 9, praying for setting aside 'No WS' order.

(k) By the impugned order dated 14/11/2017, Exhibit 175, has been allowed and defendant Nos. 3, 4 and 9 are permitted to file their written statement by imposing cost of Rs. 2,000/- each.

4. Considering the strenuous submissions of the learned advocate for the petitioner, I have gone through the petition paper book, with his assistance and the ten grounds formulated by him in the memo of the petition.

5. It requires no debate that defendant Nos. 3,4 and 9 have filed their written statements pursuant to the impugned order after 3 ½ years from the date of the 'No WS' order. It, however, needs to be noted that defendant Nos. 3 and 4 were subsequently brought on record as LR.s. of deceased Gulabsingh. Defendant No. 9 was also brought on record, subsequently. The advocate appointed by these three defendants, suddenly passed away. A new advocate was appointed, who cross-examined the plaintiff after the 'No WS' order was passed on 10/03/2014.

6. It, however, cannot be ignored that the suit is for specific performance of contract in respect of the land gut No. 41, admeasuring 51 Ares in CIDCO Mahanagar-4, Golwadi, Aurangabad. If these three defendants are not permitted to file their written statements, they would be practically rendered defenseless in a suit involving immovable property. It is known to all that the land, as is described by the plaintiff, is a highly priced land.

7. In this backdrop, inconvenience caused to the parties needs to be assessed. An irreparable harm and manifest inconvenience would be caused to these three defendants, if the suit was to proceed without their written statement. As against this, the hardships caused to the plaintiff, if the 'WS' was to be allowed, could be softened by imposition of costs. These three defendants were bound to suffer an irreparable damage if their 'WS' was not permitted. Therefore, the Trial Court has imposed costs of Rs. 2,000/- each and the plaintiff, is therefore, compensated with costs of Rs. 6,000/-, so as to balance the equities.

8. Considering the above, I do not find that the impugned order could be termed as being perverse or erroneous, keeping in view that an irreparable harm and grave prejudice could have been caused to the defendants, if their 'WS' was not to be taken on

record.

9. This petition being devoid of merit, is therefore, dismissed.
Pending Civil Application does not survive and stands disposed of.

(RAVINDRA V. GHUGE, J.)

S.P.C.