

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2433 OF 2017

LAXMAN MAHADU GAVKARE
VERSUS
SURESH MAHADU GAVKARE AND OTHERS

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Advocate for Petitioner : Shri Patil Nileshsingh J
Advocate for Respondents : Smt. Patil D.S. h/f Shri Yenegure A.P.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 01, 2018

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PER COURT :-

1. The petitioner / plaintiff is aggrieved by the order dated 6.11.2012 by which RCS No.38 of 2004, filed by the petitioner was dismissed in default for non-payment of costs of Rs.300/-. The petitioner is also aggrieved by the order dated 29.4.2016, by which, CMA No. 184 of 2015 was rejected by the trial Court and the delay caused in seeking restoration was refused.

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

3. The stand taken by the petitioner / plaintiff is that he was not informed about the dismissal of his suit under Order XXXIX Rule 11 of the Code of Civil Procedure, promptly, by his Advocate. Yet, he has

filed the restoration application on 7.2.2013 and has stated the reasons for being unable to pay the costs. He was 76 years' of age. His son is a special child and cannot take care of himself. An ancestral immovable property is the subject matter of the suit and he would be rendered remediless if an opportunity is not granted.

4. I find that the litigating sides had led evidence in CMA No.184 of 2015. Though the suit was lodged in 2004, the order of dismissal was passed on 6.11.2012 as the costs of Rs.300/- were not deposited, which the trial Court had ordered, while permitting the plaintiff to bring the L.Rs. on record.

5. Nevertheless, the dismissal of the suit would cause an irreparable loss to the plaintiff. Keeping this in mind, this Court had directed the petitioner to deposit an amount of Rs.5000/- in this Court to show his bonafides.

6. Learned counsel for the respondent Nos. 1, 2A, 2C and 3 is justified in contending that a suit lodged in 2004 will be restored if this Court entertains the petition. It is contended that the plaintiff was careless and negligent and so was his lawyer. They deserve no sympathy.

7. I am, however, of the view that the rigours suffered by these respondents, who have caused an appearance in this matter, can be reduced by granting costs.

8. Considering the above, this petition is allowed. The impugned order dated 29.4.2016 is quashed and set aside and CMA No.184 of 2014 is allowed. Consequentially, the order dated 6.11.2012 stands set aside and RCS No. 38 of 2004 stands restored on the following conditions:-

(A) The amount of Rs.5,000/- deposited by the petitioner would be transferred by the Registry of this Court to the Court of the learned Civil Judge J.D. Umarga in RCS No.38 of 2004, along with accrued interest.

(B) Respondent Nos.1-Suresh, 2A-Bharatbai, 2C-Bebabai and 3-Sonabai shall withdraw the said costs in equal proportions.

(C) By the consent of the parties, the petitioner / plaintiff shall deposit an amount of Rs. 1,000/- (Rs. One Thousand only) on/or before 31.8.2018 with the Government Medical College and Hospital, Aurangabad, through Medical Officer, High Court Dispensary, Aurangabad, either in cash or by Demand Draft (Demand Draft be drawn in the name of "Dean, Government Medical College and Hospital, Aurangabad - CSR Fund") and shall report compliance of this direction by producing a receipt of having deposited the

amount, before the trial Court on 7.9.2018.

(D) The costs of Rs.300/- will also be deposited on/or before 7.9.2018 before the trial Court.

(E) The trial Court shall decide RCS No.38 of 2004 as expeditiously as possible and preferably on/or before 31.7.2019.

(F) The litigating sides shall refrain from seeking unnecessary adjournments.

(RAVINDRA V. GHUGE, J.)

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Ajay
Kishanrao
Losarwar

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signed by Ajay
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