

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

**WRIT PETITION NO. 1818 OF 2013
WITH
CA/15835/2016 IN WP/1818/2013**

ASHOK IRRAPPA KADARE
VERSUS
UDAYKUMAR KASHINATHAPPA YADWAD AND
ANOTHER

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Advocate for Petitioner : Mr. Urgunde Suhas P.
Advocate for Respondent 2 : Mr Deshpande D. P.

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CORAM : V.K. JADHAV, J.
Dated: April 17, 2018

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PER COURT :-

1. Heard finally with consent at admission stage.
2. Learned counsel for the petitioner submits that, respondent no.1/original defendant no.1 died during the pendency of this writ petition and his legal representatives were already brought on record before the trial court in the pending suit. Respondent o.1/original defendant no.1 has filed consent written statement and, therefore, learned counsel, instead of bringing the legal representatives on record in the pending writ petition, seeks leave to delete his name.

aaa/-

This writ petition is pending since 2013 and further proceedings in the suit pending before the trial court are stayed. Since the legal representatives of respondent no.1 are already brought on record before the trial court in the pending suit and respondent no.1 during his life time had filed consent written statement, leave granted. Delete name of respondent no.1 from the array of the respondents forthwith.

3. The petitioner has instituted the suit bearing Regular Civil Suit No.124/2004 for a decree of perpetual injunction against the respondents and respondent no.2 has instituted the suit bearing Spl.C.S.No.64/2004 for declaration and perpetual injunction in respect of the same suit property. Trial court has consolidated both the suits and parties to the suit thus adduced their evidence in both the suits.

4. Petitioner has examined in all three witnesses and thereafter failed to adduce the evidence. Trial court has given opportunity to the petitioner to lead his evidence.

However, due to some difficulties, petitioner could not lead further evidence and, as such, the trial court has forfeited the right to lead the evidence and further passed the order of 'No evidence' against the petitioner. Hence, this writ petition.

5. Learned counsel for the petitioner submits that, in respect of the immovable property petitioner as well as respondent no.2 have instituted the suit against each other for certain reliefs and, if, opportunity is not given to the petitioner to adduce the evidence to substantiate his contention, he would suffer irreparable loss. In the alternate learned counsel submits that petitioner is ready to pay the costs, if directed by this Court.

6. Learned counsel for respondent no.2 submits that, after examination of three witnesses, petitioner has filed an application exh.131 for adjournment and by order dated 18.1.2013 the court has rejected the said application. Thereafter, the petitioner has filed an application exh.132 to set aside the evidence close order

passed against him and sought the permission to adduce his further evidence. The learned judge of the trial court by impugned order dated 1.2.2013 rejected the said application exh.132. Learned counsel submits that, petitioner has availed near about 14 adjournments to adduce evidence and after giving him sufficient opportunities, the trial court has rejected the application seeking adjournment and thereafter passed the evidence close order. Learned counsel submits that, both the suits are of the year 2004 and the petitioner is unnecessarily keeping both the suits pending under one or another pretext.

7. It appears that both the suits came to be instituted in the year 2004 and due to evidence close order passed by the trial court and further rejection of the application exh.132 for setting aside the said order came to be rejected by the trial court, the petitioner has preferred this writ petition in the year 2013 and for near about 5 years this writ petition is pending before this Court and due to interim orders passed by this Court,

further proceedings in both the suits are stayed since the year 2013.

8. Matter pertains to the immovable property. Both the parties have instituted the suits against each other in respect of the suit property. Petitioner has already examined three witnesses. It further appears that, the trial court though rejected the application exh.131 by order dated 18.1.2013, in the same month on 28.1.2013 petitioner has filed an application exh.132 for setting aside the said order, however, the trial court has rejected the same. Petitioner to some extent is responsible for his inaction in leading his further evidence, however, respondents can be compensated for the same. However, one more opportunity is required to be given to the petitioner with certain directions. Hence, following order.

O R D E R

- I. Writ Petition is hereby allowed.
- II. The impugned order dated 01.02.2013 passed by the learned Civil Judge, S.D., Latur in

Regular Civil Suit No.59/2012 (old 124/2004) below exh.132 is hereby quashed and set aside.

- III. Application exh.132 is hereby allowed subject to costs of Rs.5,000/- (Rs.Five Thousand) to be paid by the petitioner to respondent no.2 on or before 12.6.2018 before the trial court.
- IV. Parties shall remain present before the trial court on 12.6.2018 and on the date of appearance itself, or as per the convenience of the trial court, if any other date is given, petitioner shall examine his remaining witnesses at one stroke and close his evidence.
- V. Trial Court shall dispose of the suit as expeditiously as possible and preferably within a period of SIX MONTHS from the date of this order.
- VI. Writ petition accordingly disposed of. Pending civil application also stands disposed of.

(V.K. JADHAV, J.)

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