

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4038 OF 2017
(Chief Executive Officer and another Vs. Madhavrao Venkatrao
Patil and others)

Mr.G.V.Wani h/f Mr.U.B.Bondar, Advocate for the petitioners.
Mr.B.R.Kedar, Advocate for respondent Nos. 1 to 5.
Mr.S.K.Tambe, AGP for respondent No.6/State.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 31/07/2018

PER COURT :

1. The petitioner/Zilla Parishad is aggrieved by the order dated 01/08/2016 passed in RCS No.473/2011 by which application Exh.91 praying for vacating "evidence closing order", has been rejected. The petitioner is also aggrieved by the order dated 21/12/2016 by which the Trial Court has rejected application Exh.98 in which the pleadings pertain to the production of documents and the prayer is something different.

2. I have considered the submissions of the learned Advocate for the petitioners and on behalf of the original plaintiff Nos.1 to 5. The learned AGP represents respondent No.6.

3. The record reveals that the evidence of the defendants' witness was over on 19/04/2016. Thereafter no steps were taken to lead further evidence. The Trial Court, therefore, passed the "evidence closed" order on 21/07/2016. Exhibit 91 was immediately filed on 26/07/2016 praying for leave to lead further evidence and recall the order dated 21/07/2016. Same is rejected by the impugned order dated 01/08/2016.

4. Defendant Nos. 1 and 2 then preferred an application Exh.98 on 15/12/2016 wherein the pleadings pertain to the production of documents. However, the prayer pertains to recalling the closing evidence order. By the impugned order dated 21/12/2016, Exhibit 98 has been rejected.

5. Contention is that an agricultural land is the suit property which the erstwhile title holder Gundabai had gifted to the Zilla Parishad in 1959 for developing a school. The land was handed over to the Zilla Parishad to the extent of 19R out of the total land admeasuring 6 acres and 9 gunthas. The suit is with regard to the 19R land.

6. Learned Advocate for the plaintiffs has vehemently supported

the impugned orders. He prays for the dismissal of this petition by imposing costs of at least Rs.1,00,000/-. He submits that the petitioners have been negligent and have deliberately ignored the proceedings so as to tire out and frustrate the plaintiffs. The petitioners are dealing with the said suit in a casual manner with no seriousness. For 3 months, the second witness was not examined. After the evidence closing order was passed and after Exh.91 was rejected, they again slept for more than 5 months and then moved Exh.98 for production of documents. The plaintiffs had sought the production of the documents in possession of the petitioners by application Exh.28 dated 06/09/2012. A careless reply was submitted by the petitioners by stating that it is for them to decide whether to file the documents or not and an adverse inference can be drawn while delivering the judgment if the documents are not filed. With this approach, the Trial Court has rightly passed the impugned orders.

7. In the alternative, it is submitted that if this Court entertains the writ petition, costs of at least Rs.1,00,000/- be awarded to the plaintiffs.

8. I find from the above recorded submissions that after wasting

time for 3 months, these petitioners filed Exhibit 91 on the 5th day from the date of the evidence closing order. Same has been rejected by the Trial Court on 01/08/2016. Again the plaintiffs neglected the matter and moved Exh.98 after 4½ months.

9. In the above backdrop, though these petitioners deserve to be penalized, the fact remains that they would be defenceless if their entire evidence is not brought on record. The suit is with regard to an immovable agricultural land. Though the petitioners have wasted about 8 months from April 2016 to 15/12/2016, the delay cannot be stated to be inordinate so as to deprive them of one last opportunity. The rigours of litigation suffered by the plaintiffs can be softened by imposing costs.

10. In the light of the above, the impugned order dated 01/08/2016 is quashed and set aside. Application Exh.91 is allowed and the evidence closing order dated 21/07/2016 is set aside. Exhibit 98, being a vague and ambiguous application, stands disposed of with liberty to the petitioners to prefer a proper application.

11. It is, in this backdrop that I am subjecting these petitioners to

the following conditions :-

[a] An amount of Rs.25,000/- (Rs.Twenty Five thousand only) shall be deposited by these petitioners without seeking extension of time before the Trial Court on 20/08/2018.

[b] A list of witnesses shall be filed by the petitioners on 20/08/2018, failing which, the recording of oral evidence would be closed for the petitioners.

[c] The 5 plaintiffs shall withdraw amount of Rs.5,000/- (Rs.Five thousand only) each without conditions as costs.

[d] An application for production of documents can be filed by the petitioners on 20/08/2018 and not thereafter. This application shall contain the details about the documents as well as their status. Said application shall be dealt with by the Trial Court on its own merits after considering the contentions of all the sides.

[e] The recording of further oral evidence on behalf of the petitioners after compliance of the above directions, shall be concluded on or before the 31/10/2018.

[f] These petitioners shall be precluded from seeking adjournments on unreasonable or trivial grounds and the Trial Court would be at liberty to reject adjournment applications.

[g] By consent of the plaintiffs, the petitioners shall deposit an amount of Rs.5,000/- as donation for the treatment of poor

patients 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**”), on or before 24/08/2018 and a receipt evidencing such deposit shall be produced before the Trial Court on 31/08/2018, failing which, the evidence of these petitioners would stand closed.

(Ravindra V.Ghuge, J.)

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