

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

WRIT PETITION NO. 4979 OF 2016

**SANJAY SHRIRANG MAGAR
VERSUS
SHRIRANG LIMBA MAGAR DIED LRS AND OTHERS**

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Advocate for the Petitioner : Shri M. S. Shaikh h/f.
Shri S. S. Deshmukh

Advocate for Respondent No. 4 : Shri S. Y. Patil h/f.
Shri V. B. Deshmukh

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 05th SEPTEMBER, 2018.

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PER COURT :

1. The petitioner- plaintiff is aggrieved by the order dated 01/03/2016 passed by the trial Court, by which, his request for re-examining the plaintiff to adduce oral and documentary evidence with reference to the documents pertaining to the drinking habit of his father and his illness owing to the said habit, has been rejected. Some documents are sought to be produced even with regard to his admission in the D-addiction Centre.

2. I have considered the submissions of the learned

Advocates for the respective sides and have gone through the petition paper book with their assistance.

3. There is no dispute that the suit was actually lodged in 1996 and is pending for final hearing for 22 years. It was re-numbered as RCS No. 203/2000. All the litigating sides have led evidence and they have tendered an evidence closing purshis. The suit is at the stage of final hearing.

4. The plaintiff desires to prove certain documents, which are in original form and which pertain to his father's addiction and visits to the De-addiction Centre.

5. Issue No. 1 framed by the trial Court is with regard to whether, the plaintiff can prove that his father was addicted to vices. Issue Nos. 2 and 3 are connected with issue No.1 and the onus and burden is cast upon the plaintiff to prove that the sale-deed executed by his father in favour of the defendant No.4 is illegal, not binding on him to the extent of his part and liable to be set aside.

6. I quite see that the petitioner-plaintiff was negligent in the suit and did not take effective steps at the relevant time for leading evidence to prove the documents as noted above. However, at the same time, it cannot be ignored that if an opportunity to lead evidence is not granted, the plaintiff would lose a chance of proving his father's addiction to intoxication.

7. In my view, a specific time frame can be granted for deciding the suit so as to ensure that the plaintiff does not prolong the matters.

8. In view of the above and to avoid multiplicity of litigation, this petition is allowed. The impugned order dated 01/03/2016 is quashed and set aside.

9. Application Exhibit 246 is partly allowed with the following directions :-

(a) The petitioner/plaintiff shall pay costs of Rs. 5,000/- (Rs. Five Thousand only) and with the consent of the respondents, the said amount be deposited 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, Dengi Samiti, Aurangabad**”). The amount shall be deposited on or before 21/09/2018, and the receipt of such deposit shall be placed before the trial Court on or before 28/09/2018.

(b) The petitioner- plaintiff shall be examined on 27/09/2018 with regard to the documents already filed, which are in original form. The Photostat copies shall not be permitted to be utilized in evidence except with the leave of the trial Court, if permissible in law.

(c) The defendants would cross-examine the plaintiff on or before 06/10/2018 and thereafter, the plaintiff would tender the oral evidence closing purshis.

(d) The litigating sides would proceed to address the trial Court finally, on or before 15/10/2018 and no further adjournment would be granted.

(e) Written notes of submissions are permitted.

(f) After the compliance of the above stated directions, the trial Court would be at liberty to decide RCS No. 203/2000 (old No. S.R.C.S.No. 20/96) on or before 30/11/2018.

(RAVINDRA V. GHUGE, J.)

shp/-