

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10752 OF 2018
(Shakuntala w/o Dinkar Kshirsagar and others Vs. Kashinath
Anandrao Navpute and others)

Mr.Suvidh S.Kulkarni, Advocate for the petitioners.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 22/10/2018

PER COURT :

1. The petitioners/plaintiffs are aggrieved by the order dated 10/08/2018 passed by the Trial Court thereby allowing application Exh.65 filed by defendant Nos. 1 and 2 praying for leave to lead evidence and the same has been allowed by imposing costs of Rs.1,000/-.

2. The grievance of the petitioners is that RCS No.367/2014 was at a stage of allowing the parties to advance their submissions in rebuttal. Final submissions of the parties were advanced. At that stage, the two defendants moved an application stating that they inadvertently failed to examine the attesting witness of the Will Deed. The Trial Court should not have exercised its jurisdiction u/s 151 and should have refused the opportunity to these defendants as advancing of final submissions had commenced.

3. I find that the contention of the petitioners could have been entertained if the suit had been quite old and an inordinate delay was caused by the defendants in not leading evidence. In the instant case, the suit has been lodged in 2014 and within 4 years, it had reached the stage of canvassing final arguments. A Will Deed is to be proved in the said suit and based on the Will Deed, certain immovable and movable properties are to be shared. An attesting witness to the Will Deed is an important witness and the two defendants appeared to have acted negligently in not realizing this fact. The Trial Court has permitted the said defendants to lead evidence and has also imposed costs of Rs.1,000/- in order to ensure that the ends of justice are met.

4. In view of the above, I do not find that the impugned order could be granted as being perverse or erroneous. This petition, being devoid of merit, is therefore, dismissed. It is, however, noted that the Trial Court would not grant adjournments to defendant Nos. 1 and 2 in the event they attempt to delay the proceedings.

(Ravindra V.Ghuge, J.)