

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

923 WRIT PETITION NO. 2122 OF 2015

PARASRAM DAGU GHITARE AND OTHERS
VERSUS
SANTRAM DAGU GHITARE AND OTHERS

...
Advocate for Petitioners : Mr. R. S. Wani h/f Mr. A. S. Bajaj
Advocate for Respondent Nos. 1 & 2 : Mr. K. B. Jadhav,
Advocate for Respondent Nos. 4 & 5: Mr. S. B. Madde
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CORAM: V. K. JADHAV, J.
DATED: 21st February, 2018.

PER COURT :-

1. With consent of the parties, heard finally at admission stage.
2. The petitioners are the original defendant Nos. 3 to 5. Respondent Nos. 1 and 2 have instituted suit bearing R.C.S. No. 248 of 2012 for partition and separate possession in respect of the suit property. The petitioners though appeared in the matter, failed to file written statement within time and as such, filed an application Exh.32 for condonation of delay of 2 months 18 days caused in filing the written statement. The respondents/ plaintiffs have strongly resisted the said application Exh.32. The trial court by order dated 11.2.2013 rejected the application Exh.32. Consequently, the petitioners have filed another application Exh-34 for review of the order passed on application

Exh.32. However, the Trial Court by order dated 15.07.2014 also rejected the said application Exh.34. Hence, this writ petition.

3. The learned counsel for the petitioners submits that the petitioners though the members of the joint family, it is their contention that the property was purchased by Dagdu @ Dagdu Bhaji Ghitare out of his own income and the plaintiffs are having no concern with the suit land. It is also their case that there was partition in respect of the suit land as well as in respect of other lands and the suit land was exclusively allotted in favour of deceased Sonabai and defendant No.1. Learned counsel submits that there is delay of 2 months and odd days caused in filing the written statement. The dispute is in respect of immovable property and rights of the petitioners are required to be adjudicated upon. The petitioners have already deposited the costs of Rs.10,000/- before the Trial Court as directed by this court. The learned counsel submits that the petitioners may be given one more chance to contest the suit on merits.

4. The learned counsel for respondent Nos. 1 & 2 / original plaintiffs submits that the petitioners have not explained in their application Exh.32 the reason for not filing the written statement in time and further not explained as to why the delay has been caused to file the written statement. The learned counsel

submits that even in the review application Exh.34 the petitioners and their counsel remained absent and therefore, the court has decided the application and rejected the same. Hence, no interference is required in the impugned orders.

5. On perusal of the impugned order dated 11.02.2013, it appears that the Trial Court has rejected the application on the ground that the delay has not been explained properly and the affidavit is not filed by the petitioners in support of the said application Exh.32. There is no verification of the application also. So far as second application Exh. 34 for review of order passed below Exh.32 is concerned, the same is also rejected in absence of the petitioners and their counsel. Apart from this, the matter pertains to the immovable property and the rights of the petitioners are required to be adjudicated upon. The petitioners may be given one more chance to file the written statement and contest the suit on merits. However, the petitioners are also responsible for causing the delay in filing written statement and therefore, they are required to be saddled with costs. Hence, the following order.

ORDER

I. The writ petition is hereby allowed. No costs.

- II. The order 11.02.2013 below Exh.32 and order dated 15.7.2014 below Exh.34 in Regular Civil Suit No. 268 of 2012, passed by the learned Civil Judge, Junior Division, Gangapur, District Aurangabad, are hereby quashed and set aside.
- III. The application Exh.32 is allowed in terms of its prayers, subject to payment of costs of Rs.10,000/- (Rupees Ten thousand only) to be paid by the petitioners to the respondents-original plaintiffs. Since the petitioners have already deposited the said amount before the Trial Court, the respondents / original plaintiffs are permitted to withdraw the same.
- IV. Since application Exh.32 is allowed, application Exh.34 is filed.
- V. Writ petition is accordingly disposed of.

(V. K. JADHAV, J.)

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