

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3058 OF 2017

GEETA DATTA DALVE AND OTHERS
VERSUS
PARWATIBAI MANIKRAO DALVE AND OTHERS

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Advocate for Petitioners : Shri Dhanure Bramhanand M.
Advocate for Respondents 1 & 2 : Shri Madde Shrikant B.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: August 01, 2018

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PER COURT :-

1. I have heard the learned Advocates for the petitioner and respondents 1 and 2, who are original plaintiffs. Respondents 3 to 5 have not caused an appearance despite service of Court notice.

2. This petition throws up peculiar facts in the matter wherein, the young widow / daughter in law with two minor children is litigating against an aged widowed mother in law, over an immovable property admeasuring 1 Hectare 1 Are.

3. The sequence of events are as under:-

(a) The mother-in-law Parwatibai has initiated SCS No. 50 of 2014, seeking partition, separate possession and recovery of amounts against the daughter in law Geeta and her two minor

children and three others before the learned Civil Judge (S.D.).

(b) On 9.12.2015, the plaintiff / Witness No.2 was examined.

(c) The present petitioner / Geeta failed to cross-examine the said witness and the first 'No Cross Order' was passed on 18.1.2016.

(d) Application Exhibit 49 was filed by her on the same day and that was allowed by order dated 4.4.2016 by imposing costs of Rs.300/-.

(e) As Geeta failed to cross-examine the said witness even thereafter, the second 'No Cross Order' was passed on 18.6.2016.

(f) An application Exhibit 51 was filed on the same date, seeking the recalling of the 'No Cross Order' and that was also rejected by order dated 18.6.2016.

(g) The petitioner / Geeta once again filed another application Exhibit 53, praying for leave to cross-examine the plaintiff witness No.2 and that was also rejected by order dated 13.7.2016.

4. The learned counsel for the petitioner submits that a young widow with two minor children is litigating against a mother-in-law, who desires to grab the self acquired property of the deceased husband of Geeta, namely, Datta. The husband of Geeta has died at a very young age in unfortunate circumstances of an accident. Rather than allowing

Geeta to enjoy the self acquired property of her deceased husband, the mother-in-law desires to deprive her of that property.

5. It is further submitted that the learned Advocate appearing for Geeta was to cross-examine the plaintiff witness No.2. He failed to do so leading to the first 'No Cross Order'. Exhibit 49 was promptly filed on the same date and that was allowed on costs, which were paid by Geeta. Yet the learned Advocate did not cross-examine the witness, which led to the second 'No Cross Order' on 18.6.2016. Consequentially, Exhibit 51, filed on behalf of Geeta was rejected on 18.6.2016 and Exhibit 53 was rejected on 13.7.2016. An unfortunate widow will have to suffer on account of the conduct of the learned Advocate and would be thrown on the street along with her minor children, if she fails in the suit filed by the mother-in-law who desires to grab her property.

6. It is, therefore, submitted that any amount of costs may be imposed by this Court so as to grant one last opportunity to the petitioner.

7. Learned Advocate appearing on behalf of the plaintiff / mother-in-law has defended the impugned orders. Contention is that the petitioner as well as her Advocate have been negligent and should

suffer the consequences. After two orders of 'No Cross' were passed, yet her Advocate sought adjournments and those applications were also rejected. The petitioner desires to delay the proceedings and hence this petition should be dismissed with costs.

8. It is further submitted that even if this Court is inclined to allow this petition by imposing heavy costs, the plaintiff / Parwatibai does not desire to accept the amount of costs.

9. Respondent Nos. 2 to 5 are non-contesting defendants in this matter and have not caused an appearance, despite service of Court notice.

10. The learned Advocate for the plaintiff has relied upon the judgment of this Court in the matter of Rajendra Namdeorao Akre Vs. Ramkumar Bhalerao Balbudhe [2016 (1) Mah. L.J. 184], delivered at the Nagpur Bench. It is stated that this Court had interfered with an order of the trial Court restoring the first appeal for the third time after three 'dismissed in default' orders.

11. I find from the facts in the Rajendra case (supra), that the First Appeal No.101 of 1995 was first dismissed in default on 13.6.2011. After restoration, it was again dismissed in default on 23.11.2011.

After restoration, it was again dismissed in default and was then restored by the order dated 11.9.2014. This Court interfered with the said order, though heavy costs were imposed on the ground that there cannot be a restoration of the First Appeal, after three orders of dismissal.

12. In the instant case, it is quite peculiar that in a matter of six months, two orders of 'No Cross' were passed on 18.1.2016 and 18.6.2016. Further applications were rejected on 18.6.2016 and 13.7.2016. This Court (Coram : Sunil P. Deshmukh, J.) granted interim relief to the petitioner / Geeta while issuing notice on 11.7.2017 and stayed the suit. For the last about 13 months, the suit has been stayed.

13. Though I could have taken a strict view in this matter, I find that certain factors cannot be ignored and as such, depriving Geeta of one last opportunity to cross-examine should not be taken away. She has suffered the demise of a young husband. She is trying to nurture two minor children out of which one is a girl child and the issue, whether the self acquired property of her deceased husband is being sought to be grabbed by the mother-in-law, needs a proper adjudication. The mother-in-law has taken a stand that even if heavy costs are imposed, she does not desire to take the costs. Nevertheless, in my view, the costs need to be imposed since the petitioner / Geeta must realise the

effects of neglecting a court proceeding.

14. In the light of the above, this petition is partly allowed. The 'No Cross' Order dated 18.6.2016 is quashed and set aside and consequentially the orders on applications Exhibits 51 and 53 would lose their efficacy. An opportunity to cross-examine plaintiff / Witness No.2 is granted on the following conditions:-

(A) The petitioner / Geeta shall deposit an amount of Rs. 15,000/- (Rs. Fifteen Thousand only) on/or before 31.8.2018 with the Government Medical College and Hospital, Aurangabad, through Medical Officer, High Court Dispensary, Aurangabad, either in cash or by Demand Draft (Demand Draft to be drawn in the name of "Dean, Government Medical College and Hospital, Aurangabad - CSR Fund") and shall produce a receipt before the trial Court on 7.9.2018.

(B) The learned Advocate for the petitioner along with the petitioner herself, shall remain present before the trial Court on 7.9.2018 and conduct the cross-examination of plaintiff's witness No.2 on the same date, if she is present or on the next date on which the said witness would be available.

(C) If the learned Advocate for Geeta fails to conduct the cross examination and does not act diligently in the pending suit, Geeta would be at liberty to initiate proceedings for disciplinary action against the learned Advocate.

(D) Considering the peculiar facts in this matter and taking into account the advanced age of the plaintiff / widow, the trial Court shall decide Special Civil Suit No.50 of 2014 as expeditiously as possible, on/or before 31.10.2019.

(RAVINDRA V. GHUGE, J.)

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Ajay
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signed by Ajay
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