

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.15377 OF 2017
(Saeed Hussain s/o Abdul Kadar and others Vs. Yusufkhan s/o
Mohiyodinkhan and others)

Mr.A.S.Gandhi, Advocate for the petitioners.
Mr.H.I.Pathan, Advocate for respondent No.1.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 23/07/2018

PER COURT :

1. The petitioners are the LR's of the original sole defendant in RCS No.45/2008. They are aggrieved by the order dated 23/01/2017 passed by the Trial Court by which the evidence of the defendants has been closed. They are further aggrieved by the order dated 07/11/2017, by which the Trial Court has refused permission for leading evidence.

2. I have considered the submissions of the learned Advocates for the respective sides at length. There is no dispute as regards the following sequence of events :-

- [a] The plaintiffs had closed their evidence on 06/07/2012.
- [b] The sole defendant led evidence on 21/09/2012 and was also cross examined.

[c] An application dated 11/10/2012 was filed by the defendant seeking issuance of summons to a witness.

[d] On 18/02/2013, application Exh.71 praying for time to produce the witness, is rejected.

[e] On 09/04/2013, the evidence of the defendant was closed.

[f] On 13/06/2013, the demise of the defendant was informed to the Trial Court.

[g] The LR's were brought on record on 12/03/2014.

[h] On 24/08/2014, the LR's filed an application declaring that they are adopting the written statement of the deceased respondent. No steps, to lead evidence, were taken.

[i] On 23/01/2017, the evidence of the petitioners/defendants was closed .

[j] By order dated 07/11/2017, application Exh.100 filed by these petitioners for seeking an opportunity to lead evidence, has been rejected.

3. Learned Advocate for the original plaintiffs has vehemently opposed this petition. It is submitted that the conduct of the LR's is clearly visible from the roznama placed on record. Negligence and laxity is apparently seen in their conduct. The Trial Court has rightly rejected Exh.100 and refused permission to the LR's to lead further evidence.

4. Learned Advocate for the petitioners/LR's has strenuously

contended that they are poor labourers and work out of the State for earning their daily bread. The suit property is an immovable property which is highly priced and these petitioners would be rendered defenceless if they are not permitted to lead evidence. They would suffer the risk of losing an immovable property.

5. It is quite apparent from the dates and events that firstly, the deceased defendant wasted time in leading evidence. Secondly, after his demise, the LR's have come on record. Due to poverty and on account of being out of the State, working as a labourers, they could not lead evidence promptly. It is stated that they would be diligent and would ensure that unnecessary adjournments are not sought. If the opportunity to lead evidence is taken away, an irreparable harm would be caused.

6. I find that ulterior or oblique motives have not been attributed to the conduct of these petitioners. After the passing away of the original defendant, they have started participating in the suit. If they are disallowed from leading evidence, an irreparable harm is likely to be caused. Per contra, the plaintiffs can be compensated by imposing costs, which would be paid by the petitioners to reduce their rigours of litigation.

7. As such, this petition is partly allowed. The impugned orders dated 23/01/2017 and 07/11/2017 are quashed and set aside. Exh. 100 stands allowed subject to the following conditions :-

[a] The petitioners shall deposit an amount of Rs.10,000/- (Rs.Ten thousand only) before the Trial Court on or before 10/08/2018, failing which, they would lose the opportunity of leading evidence.

[b] The original plaintiffs shall withdraw the amount deposited in the Trial Court in equal proportions and without conditions.

[c] The petitioners/defendants shall lead evidence on or before 24/08/2018 and shall not seek adjournments.

[d] The Trial Court is at liberty to reject applications for adjournments, if are found to be based on unreasonable or trivial grounds.

[e] The Trial Court shall endeavour to decide the suit RCS No.45/2008 as expeditiously as possible and in any case on or before 31/03/2019.

[f] If the costs are not deposited, the petitioners would be precluded from leading further evidence.

(Ravindra V.Ghuge, J.)