

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4638 OF 2016

Pandurang Krishna Bhosle	..	Petitioner
VS.		
Baban Krishna Chavan & Ors.	..	Respondents

None for Petitioner.
None for Respondents.

CORAM : M. S. SONAK, J.
DATE: 12 JUNE 2018

ORAL JUDGMENT :

1] Neither the petitioner nor his Advocates are present. The record indicates that notice is served upon the respondent no. 1 – original plaintiff.

2] On 21st April 2016, this Court made the following order :

“1. Heard Mr. Mahesh Thorat, learned counsel for the petitioner.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 29.3.2016 passed by the learned Civil Judge, Jr. Dn., Koregaon, below Exhibit 221 in Regular Civil Suit No.112 of 2010. By that order, the learned trial Judge rejected the application made by the petitioner, hereinafter referred to as 'defendant no.3', for leading evidence of sale deed dated 6.7.2010.

3. Mr. Thorat submitted that by amending the plaint, the plaintiff has asserted that defendant no.3 obtained power of attorney from defendant no.1 taking advantage of her poverty and ignorance and on that basis executed sale deed in her favour on 6.7.2010. Even in his examination-in-chief, the plaintiff referred to the sale deed dated 6.7.2010. In other words, execution of the sale deed is not disputed by the plaintiff. He also invited my

attention to evidence of defendant no.3 and in particular paragraph 4 thereof, wherein reference to the sale deed dated 6.7.2010 is made. He submitted that inadvertently request was not made for marking that document as exhibit. He, therefore, submitted that the impugned order may be set aside and opportunity may be given to defendant no. 3 to lead evidence in respect of sale deed dated 6.7.2010.

4. Mr. Thorat states that the next date of hearing before the trial Court is 29.4.2016. He assures that on or before 6.6.2016, defendant no.3 will deposit Rs.10,000/- in this Court.

5. In view thereof, issue notice before admission to the first respondent, returnable on 16.6.2016.

6. Parties are put to notice that subject to the time constraint and convenience of the Court, Petition may be disposed of finally at the stage of admission. Notice shall further indicate that despite service, if the first respondent fails to appear, the Court may consider disposing of the petition finally on its own merits at the stage of admission.

7. In the meantime, there shall be an interim order in terms of prayer clause (b).

8. The petitioner shall deposit Rs.10,000/- in this Court on or before 10.6.2016. It is made clear that in case defendant no.3 does not deposit Rs.10,000/-, the ad-interim order shall stand vacated without further reference to the Court."

3] In pursuance of the aforesaid order, the petitioner has already deposited an amount of Rs.10,000/- in this Court within the extended period. The order dated 21st April 2016 had clearly stated that this petition will be disposed of finally at the stage of admission and the notice to indicate that despite service if the 1st respondent fails to appear, the Court may consider disposing of the petition finally at the stage of admission. Accordingly, there is no difficulty in

disposing of this petition finally on merits even though, the Advocates for the petitioner as well as the respondent no. 1 are not present.

4] The challenge in this petition is to the impugned order dated 29th March 2016 by which the learned trial Judge has dismissed the petitioner's application (Exhibit 221) seeking leave to lead evidence in respect of the sale deed dated 6th July 2010.

5] From the record it appears that the respondent no. 1 – original plaintiff, has amended the plaint and by way of amendment has asserted that the petitioner i.e. original defendant no. 3 obtained the power of attorney from the defendant no. 1 and on such basis executed sale deed dated 6th July 2010 in her favour. From the record, it is seen that even in the examination-in-chief, the plaintiff, has referred to the sale deed dated 6th July 2010. This means that the execution of the sale deed is not disputed by the plaintiff. The case of the petitioner is that by way of inadvertence no request was made to mark the sale deed as Exhibit. By application at Exhibit 221 such application came to be made but such application has been denied mainly on the ground that there were time bound directions from this Court to dispose of the suit.

6] From perusal of the record as well as the impugned order, the

petition, warrants interference, no doubt, subject to payment of costs by the petitioner. Such costs are required to be paid because the petitioner ought to have taken steps with promptitude. If the steps were taken with promptitude then in all probabilities the application at Exhibit 221 could have been allowed.

7] Accordingly, the impugned order dated 29th March 2016 is hereby set aside and the petitioner's application at Exhibit 221 is hereby allowed. This shall be subject to the petitioner paying to the respondent no. 1 costs of Rs.3,500/- within a period of four weeks from today. If no such costs are not paid within four weeks from today, this petition shall be deemed to have been dismissed with costs of Rs.5,000/-.

8] Rule is made absolute in the aforesaid terms. Ad interim order granted earlier is hereby vacated and the parties are directed to remain present before the trial court on 16th July 2018.

9] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)