

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.544 OF 2019

DINKAR VYANKA MUNDHE AND OTHERS
VERSUS
UTTAM RAJARAM MUNDHE AND OTHERS

Mr.S.S.Bora, Advocate for the petitioners.

Mr.A.R.Tapse h/f Mr.P.D.Suryawanshi, Advocate for respondent
No.1.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 22/08/2019

PER COURT :

1. By this petition, the petitioners/original defendants are aggrieved by the order dated 07/12/2018, passed by the Trial Court vide which application Exh.269 filed by the plaintiffs seeking permission to deposit the deficit court fees after 7 years, has been allowed.

2. I have considered the submissions of the learned Advocates for the respective sides.

3. The record reveals that RCS No.79/2009 was lodged in 2009. The cross examination of the plaintiffs commenced on 22/02/2012.

A specific question as regards not challenging the sale deeds was posed to the plaintiffs. After the cross examination was deferred, the plaintiffs sought an amendment to the plaint so as to include a challenge to the 3 sale deeds dated 10/08/1988. The said amendment was allowed and subject to the law of limitation to be considered, the prayer to include the challenge to the sale deeds was permitted.

4. Thereafter, the cross examination again commenced on 04/09/2013 and it was specifically put in cross examination to the plaintiffs as to whether they have paid the deficit court fees and whether they are aware that non payment of deficit court fees would have its own legal effects.

5. Grievance of the petitioners is that despite this position, the plaintiffs did not pay the deficit court fees and continued with the suit and after realising that, the suit might be dismissed for the said reason, Exh.269 was filed on 26/10/2018 by the Advocate for the plaintiffs without even a verification or an affidavit. Yet, the Trial Court has allowed Exh.269 ignoring the legal deficiencies in the filing of the said application.

6. I do find that the plaintiffs had been sleeping for 5 years and have been negligent. At the same time, it cannot be ignored that the suit could be dismissed and thus would lose a valuable right in the form of a share to the immovable properties. The Hon'ble Apex Court has held in A Nawab John and others Vs. V.N.Subramaniam [2013(1) Mh.L.J. (SC) 1] that though there is no limitation for depositing deficit court fees and the defendants would not acquire an advantage on this count, the court fees have to be deposited expeditiously. It has been held in paragraph Nos. 28 and 33 as under :-

“28. Therefore, from the language of Section 149 CPC it follows that when a plaint is presented to a Court without the payment of appropriate court fee payable thereon, undoubtedly the Court has the authority to call upon the plaintiff to make payment of the necessary court fee. Such an authority of the Court can be exercised at any stage of the suit. It, therefore, appears to us that any amount of lapse of time does not fetter the authority of the Court to direct the payment of such deficit court fee. As a logical corollary, even the plaintiff cannot be said to be barred from paying the deficit court fee because of the lapse of time.

33. If such conclusion is reached by the trial Court, the trial Court is mandated to reject the plaint if the plaintiff fails to pay the necessary court fee even after being called upon by the trial Court – necessarily meaning that no adjudication on the merits of the case can be made. The consequences of such a conclusion if

reached by the appellate Court, in the course of hearing of the appeal, are stipulated under [Section 12\(4\)\(c\)](#), which is already taken note of earlier.”

7. Considering the rival contentions of the parties, the situation as recorded in the foregoing paragraphs and only with the intention of ensuring that the plaintiffs do not suffer an irreparable harm on account of non payment of deficit court fees, now that the deficit court fees have already been deposited, I am disposing off this petition by imposing costs on the 2 plaintiffs. On the basis of imposition of costs, I am sustaining the impugned order. As such, the 2 plaintiffs shall deposit an amount of Rs.15,000/- (Total) before the Trial Court on or before 13/09/2019. If the said amount is not deposited, the Trial Court would proceed to dismiss the suit for non payment of the costs. After costs are deposited, the 3 petitioners herein shall withdraw the costs amount in equal proportions, without conditions.

(Ravindra V.Ghuge, J.)