

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

WRIT PETITION NO. 4206 OF 2019

SIDDI AZIZ HYDER SIDDI HYDER HUSSAIN AND OTHERS
VERSUS
WAHIDA BEGUM MIRZA ABDUL SAMAD BAIG AND OTHERS

...
Advocate for the Petitioners : Shri V. J. Dixit Sr. Adv.
h/f. Shri S. V. Dixit
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CORAM : RAVINDRA V. GHUGE, J.

DATED : 17th JUNE, 2019.

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PER COURT :

1. The petitioners are original defendants in RCS No. 147/2013 and are aggrieved by the following two orders :

(1) Issue summons to proposed defendants.

(2) Order dated 02/11/2018 directing re-issuance of notice to proposed defendant Nos. 1 to 56.

2. The learned Senior Advocate appearing on behalf of the petitioners has strenuously contended that the temporary injunction application Exhibit 5 filed by the plaintiff in the suit was allowed by order dated 02/03/2017. The Miscellaneous Civil Appeal filed by the petitioners before the Appellate Court

has been dismissed. By virtue of the interim order, the six properties of the petitioners have been placed under an injunction when the plaintiff has specifically mentioned in the plaint that she is interested only in the open portion of the suit properties as it is an undivided and unpartitioned share amongst the plaintiff and the defendants. It has been specifically pleaded that the plaintiff and defendant Nos. 3 and 4 had got married and they started residing in their respective matrimonial homes after their individual marriages. Now the plaintiff is specifically seeking a share only in the open portion.

3. The learned Senior Advocate further submits that a written statement was filed by the plaintiff pointing out that several suit properties have been transferred/alienated by the defendants to various persons. The purchasers are in possession of their respective portions which have been sold by the defendants. They have become the owners of those portions and most of them have constructed their residential as well as commercial buildings/properties. None of them have been joined as defendants and the suit is liable to be dismissed for non joinder of parties.

4. Grievance is that when this written statement was filed on 10/02/2014, the plaintiff has preferred application Exhibit 46 on 20/07/2018. It is further pointed out that the plaintiff has been saddled with costs of Rs. 100/-, Rs. 200/- and then Rs. 500/- for seeking adjournments when the matter has been posted for recording of evidence of the plaintiff. In this backdrop, Exhibit 46 has been filed only to delay the matter and block the properties of the petitioners in litigation.

5. It is then submitted that the Trial Court has issued notices to the proposed defendants. The first impugned order issuing summons to the proposed defendants is dated 10/08/2018. The second impugned order is dated 02/11/2018 re-issuing notices to the proposed defendants. Grievance is that the addresses of the proposed defendants in Exhibit 46 are vague. It is only stated that all these proposed defendants are residing at Hyder Baug, Degloor Naka, Nanded. As details of the address have not been mentioned, none of them have been served.

6. I find from the record that the defendants have specifically raised an objection that the suit be dismissed for non joinder of parties. These parties are the 56 persons, who are said to have purchased certain properties from the defendants. It is in the face of such an objection raised by the defendants on 10/02/2014 which probably alerted the plaintiff, though belatedly in 2018.

7. The issue before the Trial Court is as to whether these 56 persons are necessary to be added as defendants and whether the Trial Court would be handicapped by their non participation. The Trial Court also will have to assess as to whether it could effectively decide the suit only after addition of these parties or whether their participation is insignificant. For this purpose, the Trial Court has issued notices to the proposed defendants only to assess their involvement in the suit.

8. Considering the above, I do not find that the Trial Court has committed any error. However, the grievance expressed by the learned Senior Advocate as regards the delay being

caused in the matter after the temporary injunction was granted, on the ground that the proposed defendants are to be added, is well placed.

9. In view of the above, though this petition is disposed off, I deem it appropriate to direct the Trial Court as under :-

(a) The Trial Court shall direct the plaintiff to serve the proposed defendants through substituted service by publishing the notice in a largely circulated newspaper so far as the Nanded edition is concerned. Such publication should be caused within four weeks from today.

(b) After the proposed defendants cause their appearances, the Trial Court shall proceed to decide Exhibit 46 on its own merits within four weeks from the date of such appearance.

(RAVINDRA V. GHUGE, J.)

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