

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6904 OF 2018

KALABAI VISHNU DAPAKE AND ANOTHER
VERSUS
VISHNU RAMCHANDRA DAPAKE AND OTHERS

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Advocate for Petitioners : Shri Rahane S.K.
Advocate for Respondents 1 to 8, 10 & 11 : Shri Garud V.B.
Advocate for Respondent 9 : Shri Jadhav P.R.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: April 10, 2019

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PER COURT :-

1. The petitioners are the plaintiffs, who are aggrieved by the order of the trial Court, dated 17.4.2018, by which, application Exhibit 47 has been rejected. Consequentially, the order of dismissing the suit as against defendant No.9 has been sustained.

2. I have heard the contentions of the learned Advocates for the respective sides. Shri Garud, learned Advocate appearing on behalf of the respondents / original defendants, strenuously opposes this petition and submits that the petition deserves to be dismissed with heavy costs. In the alternative, he submits that heavy costs may be imposed, keeping in view that the Writ Petition was earlier dismissed by this Court on 21.9.2018 for non-removal of office objections and was subsequently restored by order dated 18.1.2019.

3. I find from the record that the suit has been filed by these petitioners for seeking partition and separate possession. Petitioner No.1 is the daughter of defendant No.1 and petitioner No.2 is the first wife of defendant No.1. These ladies are litigating against the rest of the family members. The record further reveals that the plaintiff had taken steps to serve defendant No.9. Each time the service of notice was incomplete and finally, the trial Court issued notice to defendant No.9 on 17.1.2018 on the new address. Yet, defendant No.9 could not be served. Record also reveals that the plaintiff had prayed for serving defendant No.9 by substituted service through paper publication vide their application Exhibit 46 and this request was refused by the trial Court.

4. In view of the above, though the plaintiffs submitted another new address of defendant No.9, the trial Court concluded that proper steps have not been taken and hence, the suit was dismissed as against the said defendant. Application Exhibit 47, filed by the plaintiffs was rejected for the same reason by the impugned order dated 17.4.2018.

5. I find that an irreparable harm would be caused to the plaintiffs, if the suit is dismissed as against defendant No.9. The last

effort of the plaintiffs till 27.2.2018, failed. Had the trial Court permitted the plaintiffs to serve defendant No.9 by paper publication, this situation could have been averted.

6. In view of the above, this petition is allowed. The impugned order dated 17.4.2018 and the order dated 27.2.2018, passed by the trial Court are quashed and set aside. Application Exhibit 47 stands allowed. Since defendant No.9 has appeared in this petition, he shall *suo moto* cause an appearance in RCS No.104 of 2009 on the next date which is 17.6.2019.

7. In so far as costs are concerned, and as there are 11 defendants, considering the facts as recorded above, the plaintiffs shall deposit a total amount of Rs.5,500/- before the trial Court on/or before 3.5.2019. Each of these respondents / defendants shall withdraw the amounts in equal proportions, unconditionally. Needless to state, if the costs are not deposited, this order shall stand recalled, this petition shall stand dismissed and the impugned orders of the trial Court dated 27.2.2018 and 17.4.2018 shall stand restored.

(RAVINDRA V. GHUGE, J.)

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