

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

922 WRIT PETITION NO.11377 OF 2014

BHAGWAN VITTHAL DHANVE
VERSUS
GAJANAN BHAGWAN DHANVE AND OTHERS

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Advocate for Petitioners : Mr. Abhijeet More, Adv.

CORAM : P.R. BORA, J.
DATED : 5th July, 2019.

PER COURT:-

1. Heard Shri Abhijeet More, learned counsel for petitioner.

2. The petition has been dismissed as against Respondent Nos.8 and 9. Respondent No.7 though is duly served, no one has caused appearance for him. The other respondents are represented by their counsel, however, today the said counsel is not present before the court.

3. The petitioner has challenged order dated 20th October, 2014 passed by Joint Civil Judge, Junior Division, Paranda below application at Exh. 155 in RCS No.98/2007. The aforesaid application was filed by the present petitioner, who is

defendant No.1 in the aforesaid civil suit for setting aside 'No WS' order passed against him and to permit him to file his written statement. The said application has been rejected by the trial court vide the impugned order.

4. The learned counsel pointed out that on the application filed by the present petitioner at Exh. 155, the plaintiffs have endorsed their 'No objection' for permitting the petitioner, i.e. original deft.No.1, to file his written statement on record and to set aside 'No WS" order passed against him. The learned counsel further submitted that the counsel appearing for original deft.No.2, however, objected for allowing the said application and upholding his objection, the trial court has rejected the application so filed by the petitioner. The learned counsel submitted that the trial court has grossly erred in rejecting the application filed by the petitioner. The learned counsel, in the circumstances, has prayed for setting aside the impugned order.

5. I have carefully gone through the

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impugned order and the other material placed on record. The record shows that the present Respondent Nos. 1 to 6 have filed RCS No. 98/2007 for partition and possession of the suit properties. The present petitioner is deft.No.1 in the said civil suit. The present respondent No.7 is deft.No.2 in the said civil suit. As per the averment in the plaint, some of the ancestral properties are sold to original deft.Nos. 2 to 4. The said persons are also added as defendants in the said civil suit. The learned trial Judge has rejected the application filed by deft.No.1, observing that it will have adverse effect on the contention raised by deft.No.2. The learned Judge has also referred to RCS No.44/2007 filed by deft.No.2 – Amanullah Shekhan Pathan, wherein the present petitioner has filed the written statement on 6.6.2007. It appears to me that the learned Trial Judge has failed in appreciating that permitting deft.No.1 to file his written statement perhaps would not have any adverse impact on merits of the said suit. Even if the present petitioner would not have filed the written statement, inference would have been drawn that he has nothing

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to say about the suit filed and prayer made therein by the original plaintiffs. Now, even if it is accepted that the present petitioner has filed the consenting written statement, the position is not likely to change. Moreover, if it is the contention of deft.No.1 that the plaintiffs and deft.No.1, in connivance with each other, are trying to defeat the claim made by him in RCS No. 44/2007, the said contention can still be raised by him and that can be considered on its own merits. In the circumstances, according to me, there was no reason for the trial court to reject the said application.

6. For the reasons stated herein above, the writ petition deserves to be allowed and it is accordingly allowed. Consequently, the application at Exh.155 stands allowed.

(P.R. BORA)
JUDGE

BDV