

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8965 OF 2018

RAJDHAR SAHEBRAO JAGDALE AND OTHERS
VERSUS
KADUBA GOVINDRAO JAGDALE AND OTHERS

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Advocate for Petitioners : Shri Langhe Vijay R.
Advocate for Respondents 1-i to iii : Shri Kalani Pravin N.
Advocate for Respondents 2(a) : Shri Shinde Sanket S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: April 01, 2019

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PER COURT :-

1. On 24.8.2018, I had passed the following order:-

"1 After considering the submissions of the learned Advocate for the petitioners, I had passed the following order on 21.8.2018.

"1 An order recalling the order of abatement is under challenge in this petition. The suit property involves an agricultural land.

2 After considering the submissions of the learned Advocate for the Petitioners and upon going through the record available, I was inclined to dismiss this petition for being devoid of merit. However, the learned Advocate for the Petitioners submits, on instructions, that the learned 4th Joint Civil Judge, Junior Division, Aurangabad has made three incorrect observations in the impugned order,

which are as under :-

- (a) That, these Petitioners have not tendered any reply to the application in MARJI No.362/2014, when a typed copy of the said reply dated 14.11.2014 is placed on record to indicate that such a reply was filed.*
- (b) That, the original Applicants/ legal heirs were not cross examined, when these Petitioners had actually cross examined the witness of the legal heirs.*
- (c) That, these Petitioners did not lead any evidence, when the Petitioners have led oral evidence in the matter.*

3 I made it clear to the learned Advocate for the Petitioners that if the above statements turn out to be untrue, this Court would initiate steps for punishing the Petitioners for making false statements before this Court.

4 The learned Advocate for the Petitioners seeks time to make a statement on the next date.

5 Stand over to 24.08.2018 (Friday) for “Passing Orders”.

2 Learned counsel points out from the certified copies of the documents that the statement made in Clauses (a) to (c) reproduced above is truthful and the documents to that effect can be filed on record as she has received the certified copies of such documents.

3 *Considering the above, issue notice to the respondents, returnable on 5.10.2018. Until the returnable date, the impugned order dated 24.10.2017 shall stand stayed.*

4 *The documents referred in Clauses (a) to (c) reproduced above, shall be properly typed out and shall be placed on record on/or before 30.8.2018, failing which, the ad-interim protection granted shall stand vacated without reference to the Court on 31.8.2018."*

2. All the litigating sides have appeared, subject to Court notice as well as paper publication.

3. It is obvious from the record that the learned IV Joint Civil Judge J.D. Aurangabad has failed to consider the factual aspect as regards these petitioners having tendered a reply on 14.11.2014, had cross-examined the witnesses of the original applicants / legal heirs and had also led evidence. The impugned order, therefore, indicates lack of application of mind by the learned Judge, to the record before him.

4. In view of the above, the impugned order dated 24.10.2017 is quashed and set aside and MARJI No.362 of 2014 is relegated to the learned IV Joint Civil Judge J.D. Aurangabad.

5. All the litigating sides would appear before the said Court on 12.4.2019, which is the scheduled. date. MARJI No.362 of 2014 would be considered afresh in the light of the submissions of the learned Advocates and the record available. All the Advocates for the respective sides would canvass their submissions within one week from the date of appearance. RCS No.992 of 2001 shall be adjourned until such decision.

6. The trial Court would endeavour to decide MARJI No.362 of 2014 as expeditiously as possible and in any case on/or before 15.7.2019.

(RAVINDRA V. GHUGE, J.)

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