

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.12648 OF 2017

Laxmibai Tukaram Shintre & Ors. ... Petitioners
Vs.
Balgonda Shivagouda Patil & Ors. ... Respondents

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Mr. Prashant Kulkarni I/b. Mr. A.B. Desai for the petitioners.
Mr. B. R. Mandlik for respondent Nos.1 to 3.

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CORAM : M. S. KARNIK, J.

DATE : 17th SEPTEMBER, 2019.

P. C.:

1. Heard learned counsel for the petitioners.

2. The petitioners are the original defendant Nos. 7 to 9, 12 to 17 and 19 to 22. The present respondent Nos.1 to 3 are the original plaintiffs. The suit is filed for partition and for declaration that the will deed executed by some of the defendants are not binding on the share of the plaintiffs. The plaintiffs were cross examined on behalf of the defendant Nos.1 to 6 on 17.1.2017. The defendants despite grant of several opportunities failed to cross examine the plaintiffs. On one occasion the Trial Court granted adjournment subject to payment of cost. Even this

cost was not paid. The Trial Court therefore passed no cross order dated 25.4.2017.

3. The petitioners made an application for setting aside the no cross order. The Trial Court however did not find any justification for setting aside the order and by the impugned order passed below exhibits 531 and 532 rejected the application for setting aside the no cross order.

4. No doubt the petitioners did not cross examine the plaintiffs despite grant of several opportunities. In the application it is stated that there had been the change of advocate who did not inform the petitioners about the cost which was imposed by the Trial Court. In my opinion, only by way of indulgence and because the petitioners should not be deprived of an opportunity of cross examine the plaintiffs, that an opportunity needs to be granted to the petitioners to cross examine the plaintiffs subject to compensating the plaintiffs by imposing cost of Rs.10,000/-.

5. The cost of Rs.10,000/- be paid within a period of two weeks from today.

6. It is made clear that the petitioners will co-operate with the Trial Court in expeditious disposal of the suit which is of the year 2002.

7. Learned counsel for the petitioners undertakes that they will not seek unnecessary adjournments and fully co-operate with the Trial Court in expeditious disposal of the suit. Considering that the suit is of the year 2002, the Trial Court is requested to decide the suit as expeditiously as possible and preferably within a period of nine months from today.

8. The petition is allowed. The impugned orders are set aside.

(M. S. KARNIK, J.)