

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

WRIT PETITION NO.10596 OF 2017

Vijay Kisan Hupare & Ors. ... Petitioners
Vs.
Aayeshabi Babalal Pendari
(since deceased) through L.Rs.
Babalal Imamsab Pendari & Ors. ... Respondents

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Mr. Sandeep S. Koregave for the petitioners.
Mr. S.R. Ganbavale for the respondents.

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CORAM : M. S. KARNIK, J.

DATE : 18th SEPTEMBER, 2019.

P. C.:

1. Heard learned counsel for the petitioners and learned counsel for the respondents.

2. The order challenged is passed below Exhibit 112 in Special Civil Suit No.54 of 2005. The petitioners are the original defendant Nos.1 to 4. The suit is filed for partition and declaration. The defendant Nos.1 to 4 are the purchasers of the suit property. Later on defendant Nos.1 to 4 sold the suit property to defendant Nos.8 and 9.

3. The Trial Court passed no cross order on 28.8.1997. After the delay of 15 years the application Exhibit 112 is filed for taking the written statement on record. It is the contention of learned counsel that the Trial Court should have allowed the application by imposing reasonable cost. He would submit that the trial is still at the stage of recording of evidence. He submits that even the evidence of defendant Nos.8 and 9 is still to be recorded. He invited my attention to the application made at Exhibit 112 especially paras 3, 4 and 5. He would submit that it is the petitioners-defendant Nos.1 to 4 who had purchased the suit property and subsequently sold it to defendant Nos.8 and 9. According to him it is absolutely essential for defendant Nos.1 to 4 to defend the suit.

4. I have gone through the order passed by the Trial Court. I have perused the application Exhibit 112. In the application the reason mentioned is that the father of the defendant No.3 who is 'Karta' of the family was looking after the litigation. As petitioners were busy, they could not collect all necessary information and documents to enable them to file the

written statement. It is further stated that as they were so occupied in their employment and other day to day activities, it was not possible for them to engage a lawyer.

5. I do not find the reasons to be satisfactory. There is a gross delay of 15 years which has not been satisfactorily explained. It is pointed out that the suit was already fixed for arguments but later on at the instance of defendant No.8, no cross order was set aside and defendant Nos.5 and 6 were permitted to lead their evidence. The suit was filed in the year 1997 and renumbered in the year 2005. I am therefore also not inclined to interfere with the order passed. However, liberty to the petitioners to challenge the order in Appeal is kept open if the decree passed is adverse to them.

6. The petition is rejected with no order as to costs.

(M. S. KARNIK, J.)