

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.695 OF 2018

Phulanbai wd/o Sukhdev Gajbhiye
And ors.

... Petitioners.

-vs-

Parvatabai wd/o Mahadev Gajbhiye
And ors.

... Respondents.

Shri M. R. Khan, Advocate for petitioners.
Respondents served.

CORAM : A.S.CHANDURKAR, J.
DATE : July 16, 2019

P.C.

The respondents are served but they have not chosen to contest the writ petition.

Rule. Heard finally considering the short issue involved.

2. The petitioners are the original plaintiffs who are aggrieved by the order passed by the trial Court below Exhibit-57 thereby rejecting the prayer for grant of adjournment as well as the subsequent order passed by the trial Court refusing to permit the plaintiffs to lead their evidence.

The suit as filed is for cancellation of sale-deed dated 15/04/1998 along with a prayer for partition and separate possession. In that suit the affidavit-in-lieu of evidence of the plaintiff No.6 was filed on record. On

20/04/2017 when the suit was fixed for evidence the plaintiff No.6 moved an application seeking adjournment. That application was rejected by the trial Court. Thereafter on the next date another application was filed praying that the earlier order dated 20/04/2017 be set aside and the plaintiffs be permitted to lead evidence. That request was not accepted by the trial Court by its order dated 20/06/2017 as it rejected the said application. Hence the present writ petition.

3. Heard Shri M. R. Khan, learned counsel for the petitioners. He submits that the initial application filed below Exhibit-57 was moved by the plaintiff No.6 himself who was not aware about the legal niceties. The subsequent application giving adequate reasons ought to have been allowed by the trial Court especially as the affidavit-in-lieu of evidence was already on record. He submits that an opportunity to lead evidence deserves to be granted to the plaintiffs.

4. On perusing the documents on record it is seen that affidavit-in-lieu of evidence was already placed on record by the plaintiff No.6. Adjournment was sought on 20/04/2017 as the plaintiffs' counsel was not available. That request was turned down and hence on 15/06/2017 the application in question came to be moved. It is seen that the plaintiffs ought to have been permitted to lead their evidence. At the most the trial Court should have

imposed certain conditions while granting such permission.

5. In the light of the fact that there is no opposition to the reliefs sought in the writ petition, one opportunity deserves to be granted to the plaintiffs. Accordingly the order dated 20/04/2017 passed below Exhibit-57 as well as the subsequent order dated 20/06/2017 are set aside. The plaintiffs are permitted to lead their evidence before the trial Court. The plaintiffs however, shall not seek unnecessary adjournments and shall not delay the proceedings in the suit.

The Writ Petition is accordingly allowed. No costs.

JUDGE