

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

Writ Petition No. 1398 of 2018

Smt. Samanga Wd/o Govind Junagade and others
Vs.
Narayan S/o Devidas Junagade and others.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S.V. Sohoni, Advocate for petitioners.
Mr. C.A. Joshi, Advocate for respondent No.3.

CORAM : MANISH PITALE, J.

DATED : APRIL 16, 2019

By this writ petition, the petitioners (original defendants No.1 to 3) have challenged the order dated 08/09/2016, passed by the Court of Jt. Civil Judge (Jr.Dn.), Akola, whereby the right of the petitioners to cross-examine the respondent No.1 (original plaintiff) was taken away, as also order dated 07/11/2016, whereby the application for setting aside of the said order and for permission to cross-examine the respondent No.1 was rejected and further order dated 24/10/2017, whereby the application for review of the said order filed by the petitioners was also rejected.

2. The respondent No.1 herein filed a suit for partition, separate possession and

mesne profit bearing Regular Civil Suit No. 325/2010 before the trial Court wherein the petitioners and respondent Nos. 2 to 4 were arrayed as defendants. The respondent No.1 filed his affidavit in evidence some time in the year 2013. Thereafter, the matter was kept for cross-examination of the respondent No.1. On 18/08/2016, the trial Court directed that the petitioners must cross-examine the respondent No.1 failing which their right of cross-examination would be taken away. Thereafter, on 08/09/2016, since the petitioners failed to cross-examine the respondent No.1 the order of no cross was passed against the petitioners. In this situation, the petitioners filed an application for setting aside the said order and for permission to cross examine the respondent No.1. But, by the order dt. 07/11/2016, the said application was rejected. In the face of said order the petitioners filed an application for review of the said order which also stood rejected by the impugned order dt. 24/10/2017. As a consequence, evidence tendered by respondent No.1 has remained unchallenged before the trial Court.

3. It is pointed out on behalf of the petitioners that the suit is for partition and separate possession which means that all the

parties are plaintiffs as well as defendants and that the dispute is between the members of same family. It is also pointed out in the writ petition that after the respondent No.1 had filed the affidavit in evidence on 10/10/2013 attempts were made at the mediation and settlement of the dispute between the family members. It is pointed out that the matter was sent for mediation on 05/08/2015, but, unfortunately no settlement was arrived at. The learned counsel for the petitioners has also invited attention of this Court to the communication sent by the Presiding Officer of the trial Court to the District Judge mentioning that even the Court had made an attempt of judicial settlement of the dispute between the parties.

4. On this basis, it is submitted that it would be in the interest of justice and all parties to the litigation that the impugned orders are set aside, so that the dispute between the parties can be resolved on merits. It is submitted that the unchallenged testimony of the respondent No. 1 would be adversely affecting the petitioners as well as other defendants before the trial Court.

5. Upon notices issued in the present

writ petition only respondent No.3 (original defendant No.5) entered appearance through counsel while respondent No.1 (original plaintiff) and respondent No. 2 and 4 have chosen not to appear before this Court despite being served with notices issued by this Court.

6. Taking over all view of the facts and circumstances brought on record and fact that the suit filed by respondent No.1 is for partition and separate possession involving dispute between the members of the same family, as also the fact that there is material showing attempts made at the mediation and settlement of dispute between the parties, it would be in the interest of justice that the petitioners are granted an opportunity to cross-examine the respondent No.1. This would ensure that the parties get a fair opportunity to place on record the entire material pertaining to their respective claims in the dispute pending before the trial Court. The learned counsel appearing for respondent No.3 has no specific objection to set aside the order although a request has been made that the trial Court may be directed to dispose of the suit expeditiously as the same is pending since the year 2010.

7. In view of the above, writ petition is

allowed. The impugned orders are quashed and set aside. The trial Court is directed to give an opportunity to the defendants to cross-examine the respondent No.1 (original plaintiff). The parties are directed to co-operate with the trial Court for expeditious disposal of the suit. The trial Court is expected to dispose of the suit as expeditiously as possible and preferably within period of one year from today.

JUDGE

MP Deshpande