

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1945 OF 2007

1. Bhau s/o Harikrishna Pawar,
age 48 years, Occ. Agriculture,
2. Gorakh s/o Nama Sawant,
age 66 years, Occ. Agriculture,
Both r/o Ghat Pimpri, Tq. Washi,
District Osmababad. ..Petitioners..

VERSUS

1. Dagdu s/o Maroti Gaikwad,
age 59 years, Occ. Agriculture.
2. Govind s/o Maroti Gaikwad,
age 56 years, Occ. Agriculture.
3. Rambhau Khanda Pawar,
age 56 years, Occ. Agriculture,
all above R/o Ghat Pimpri,
Tq. Washi, District Osmanabad. ..Respondents...

...

Advocate for Petitioners : Mr. Vithal M Chate

...

CORAM : V.K. JADHAV, J.

Dated : February 28, 2020

...

ORAL JUDGMENT :-

1. Heard the learned counsel for the petitioners.
2. The petitioners are the original non
applicants in the Misc. Civil Application No.1 of 2001

aaa/-

filed for inquiry of the mesne profit in terms of the decree passed in R.C.S. no.172 of 1999. By order dated 15.12.2004, the Trial Court has forfeited the right of the petitioners to lead the evidence. The petitioners, therefore, filed an application Exh.38 for setting aside the said order, however, by impugned order on 9.2.2007 the Trial Court has rejected the said application.

3. Learned counsel for the petitioners submits that the further proceedings in the said M.C.A. 1 of 2001 are pending in view of the interim order passed by this Court. The petitioners would be affected by the order of mesne profit and, as such, they may be given one chance to adduce the evidence and in terms of the order passed by this court the petitioners have already deposited the amount of Rs.1,000/- (Rs. One Thousand) before the Trial Court on 11.4.2007 and application Exh.38 may be allowed subject to costs of said amount of Rs.1,000/-.

4. It appears that office has informed that

aaa/-

M.C.A. No.1 of 2001 is disposed off on 20.6.2008. The counsel appearing for the petitioners has no instructions from his client as to the present status of the said application bearing M.C.A. No.1 of 2001. In terms of the interim order passed by this Court, if the said M.C.A.1 of 2001 is still pending, then, I am inclined to allow this writ petition by giving one opportunity to the petitioners/original non-applicants to contest M.C.A.1 of 2001 by adducing oral and documentary evidence to substantiate their contentions. Hence, I proceed to pass the following order.

O R D E R

- i. Writ petition is hereby allowed.
- ii. The impugned order dated 9.2.2007 passed by the Civil Judge Junior Division, Bhoom, District Osmanabad below Exh.38 in M.C.A. No.1 of 2001 is hereby quashed and set aside.
- iii. The application Exh.38 is allowed in terms of its prayer clause subject to costs of Rs.1,000/- which is already deposited by the petitioners before the Trial Court on 11.4.2007. Same shall be paid to the respondents/original applicants.

aaa/-

- iv. Writ Petition is accordingly disposed off. Rule is made absolute.

(V.K. JADHAV, J.)

...