

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5688/2020

MANDABAI BIRU KALE, DIED, THROUGH L.RS. BIRU VITTHAL KALE AND
OTHERS
VERSUS
MACHHINDRA DEORAO MUNGASE & OTHERS.

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Shri D.R. Jayabhar, Advocate for petitioners.

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CORAM: V.L. ACHLIYA, J.
DATE: 18.08.2020

PER COURT :

1] By this petition under Article 227 of the Constitution of India, the petitioners have challenged order dated 20.10.2018 passed by learned Joint Civil Judge (S.D.), Newasa.

2] The impugned order reads as under:-

“The present suit is pending for steps i.e. since 24.10.2017 i.e. since last 09 consecutive dates. Perused roznama, it appears that plaintiff have not taken effective steps for disposal of suit. Plaintiff absent since long. Sufficient opportunity given to plaintiff, no progress in the suit. Today plaintiff and Advocate is repeatedly called at 5.26 P.M. but absent. It appears from the conduct of plaintiff have lost interest to proceed with the suit. Already order below exh.1, suit is put for DID Order, however plaintiff have not complied. Hence, no fruitful purpose would be served by keeping the present unattended matter on the board. Hence suit is hereby dismissed under Order 9 Rule 3 of the Code of Civil

Procedure.”

2] Heard learned counsel for the petitioners. Perused the impugned order.

3] In brief, it is the contention of learned counsel for the petitioners that the impugned order is not sustainable in law. The suit is filed seeking measurement of the suit land and fixation of boundaries. It is submitted that on account of dismissal of suit, serious consequences would be result to the petitioners.

4] I have carefully considered the submissions advanced in the light of impugned order. In my view, the order passed is legal, proper and suffers from no error of law. So also the reasons and findings recorded to dismiss the suit cannot be termed as perverse in law. The impugned order is well within the scope of exercise of powers vested with the Court under Order 9 Rule 3 of the Code of Civil Procedure. As against the order of dismissal passed vide impugned order dated 20.10.2018, the remedy has been provided to an aggrieved party under Order 9 Rule 4 of the CPC i.e. to apply for restoration of suit or to bring fresh suit subject to law of limitation. Instead of availing the remedy as provided under Order 9 Rule 4 of the CPC, the petitioners have not taken any steps for more than one and half year to seek restoration of the suit. Instead of availing the remedy as provided under the law filed this petition.

In absence of any case being made out to exercise jurisdiction vested with this Court under Article 227 of the Constitution of India, the petition deserves to be dismissed. Accordingly, the petition is dismissed with no order as to costs.

(V.L. ACHLIYA, J.)