

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

73 WRIT PETITION NO.8335 OF 2018

1. Kachrabai w/o Sitaram Manchare
Age : 82 years, occ : agri.,
2. Ahilyabai w/o Rajendra Dohiphode
Age : 45 years, occ : agri.,
3. Thakubai d/o Shantaram Manchare
@ Shobha Jalinder Bhosale
Age : 42 years, occ : agri.

All r/o Tamaswadi, Taluka Newasa,
District Ahmednagar.

Petitioners

Versus

Laxman Sitaram Manchare
Age : 48 years, occ : agri.,
R/o Tamaswadi, Taluka Newasa,
District Ahmednagar.

Respondent

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Mr. D.R. Jaybhar, Advocate for the petitioners.
Mr. S.S. Kotkar, Advocate for the respondent.

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CORAM : Rohit B. Deo, J.

DATE : 13th January 2020.

JUDGMENT :-

. Rule. Rule is made returnable forthwith. Heard finally with consent of the parties.

2. The short grievance of the petitioner is that by an order impugned dated 14.08.2017, the learned trial Court rejected the application (Exh.18) preferred by petitioners, who are defendants 1 to 3, to deposit cost of Rs. 100/- which was condition imposed by the trial Court for permitting the petitioners - defendants 1 to 3 to file written statement.

3. Concededly, defendants 1 to 3 were proceeded without written statement. Defendants preferred an application (Exh.14) seeking permission to file written statement which came to be allowed by the trial Court subject to payment of cost of Rs. 100/- to be paid by each defendant to the plaintiff. Clause – 2 of the order dated 24.07.2014 directs that the cost be paid to the plaintiff at the earliest. It is not in dispute that the petitioners – defendants 1 to 3 are rustic and are not well acquainted with the legal proceedings.

4. The application (Exh.18) for permission to file written statement and for compliance of the order passed below Exh.14 is rejected by the order impugned. The learned trial Court has held that the application (Exh.18) is not

maintainable. It is difficult to appreciate the said observation.

5. Be that as it may, while issuing notice and granting interim relief vide order 25.07.2018, this Court was pleased to direct the petitioner to deposit a sum of Rs. 10,000/- before the trial Court. It was directed that fate of the said deposit shall be decided finally at the time of final hearing of this petition.

6. Considering that the suit is for partition and valuable rights of the litigants are involved, in my view, the ends of justice shall be fulfilled if the order impugned is set aside and the petitioners – defendants 1 to 3 are permitted to file the written statement subject to payment of cost of Rs. 10,000/-.

7. The order impugned is set aside.

8. Written statement, which is already filed on record, shall be read and recorded.

9. The sum of Rs.10,000/- (Rupees Ten Thousand), which is deposited by the petitioners – defendants 1 to 3 in the trial Court, shall be paid to the plaintiff as cost.

10. Considering that the suit is pending since 2014, the learned trial Court is requested to expedite hearing of the

suit and in any event, to finally dispose of the suit within a year from the communication of this order.

11. Rule is made absolute in aforesaid terms.

(ROHIT B. DEO, J.)

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