

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

927 WRIT PETITION NO.8813 OF 2015

1. Vasant S/o Natharao Dahiphale
2. Walmik S/o Natharao Dahiphale

... Petitioners
(Orig. Defts. Nos.23 & 25)

Versus

1. Gopal S/o Gangadhar Dahiphale
2. Govind S/o Gangadhar Dahiphale
3. Laxmi D/o Gandgadhar Dahiphale
4. Sunita W/o Narayan Phad
5. Haribai W/o Ramesh Nagarsoge
6. Sulubai W/o Gangadhar Dahiphale

... Respondents
(Orig. Pltf. Nos.1 to 6)

...
Mr. Sahebrao A. Nagarsoge , Advocate for Petitioners

...
CORAM : V. K. JADHAV, J.
DATED : 18th February, 2020

PER COURT :-

1. Heard learned counsel for the petitioners. Though the learned counsel for the respondents – plaintiffs are duly served, none appears for them.

2. The petitioners are original defendant nos.23 & 25. The respondents – original plaintiff nos.1 to 6 have instituted the suit bearing Regular Civil Suit No.10 of 2011 for partition and khas possession before the learned Civil Judge, Senior Division, Ahmedpur. On 16.01.2013, the trial Court has passed 'No WS' order against the petitioners – defendants herein.

Therefore, the petitioners – defendants have filed the applications for setting aside the 'No WS' order and by order dated 21.06.2014, the trial Court has allowed their applications, subject to costs of Rs.500/- with the condition that if the costs is not paid within time then their applications filed for setting aside the 'No WS' order would be treated as rejected. Even then, the petitioners – defendants herein have not deposited the costs within time. It further appears that the petitioners have filed the applications Exhibits 78 & 79 respectively for accepting the costs and set aside the order passed below Exhibits 65 & 66 respectively. However, vide impugned order passed below Exhibits 78 and 79 dated 18.10.2014 in Regular Civil Suit No.10 of 2011, the trial Court has rejected the application. Hence this writ petition.

3. Learned counsel for the petitioners submits that the suit has been instituted for general partition and khas possession in respect of the immovable property. The trial Court has given time to pay the costs till 05.07.2014 however the petitioners could not deposit the said costs and they have filed an applications Exhibits 78 & 79 on 30.08.2014. Learned counsel submits that the petitioners may be given one chance to contest the suit on merits. The petitioners are ready to pay the costs as directed by this Court.

4. It appears that the respondents - plaintiffs have instituted the suit for partition and khas possession in respect of immovable property. The petitioners have filed the applications Exhibits 78 and 79 within one and half months after their applications Exhibits 65 and 66 came to be allowed subject to costs of Rs.500/-. This writ petition is of the year 2015 and by way of interim relief obtained by the petitioners, the further proceedings in the suit are stayed. In view of the same, I am inclined to allow this writ petition subject to the additional costs to be paid by the petitioners to the respondents. Hence, I proceed to pass the following order:

ORDER

(I) The writ petition is hereby allowed.

(II) The impugned order dated 18.10.2014 passed by the Civil Judge, Senior Division, Ahmedpur below Exhibits 78 and 79 in Regular Civil Suit No.10 of 2011 are hereby quashed and set aside.

(III) The application Exhibits 78 and 79 are allowed in terms of its prayer clause in its entirety, subject to costs of Rs.2500/- each to be paid by the petitioners – original defendants to the respondents - original plaintiffs within four weeks from the date of this order before the trial Court.

(IV) The writ petition is accordingly disposed off.

(V. K. JADHAV, J.)