

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

917 WRIT PETITION NO.522 OF 2020

BALASAHEB BHAUSAHEB KARDILE AND OTHERS
VERSUS
DEVIDAS BHAUSAHEB KARDILE AND OTHERS

...

Mr. P.B. Vikhe Patil, Advocate for petitioners.

...

CORAM : **Rohit B. Deo, J.**

DATE : 9th January 2020.

PER COURT :-

. The petitioners are defendant Nos.6 to 9 in a suit for partition which was instituted by respondent No.1 Devidas and one Smt. Hausabai.

2. Smt. Hausabai, who was impleaded as plaintiff, sought her deletion from the array of plaintiffs. She contended that she has no grievance and her thumb impression was fraudulently obtained by Devidas. In view of the said contention, vide order dated 22.01.2015, the trial Court directed plaintiff Devidas to transpose Smt. Hausabai as defendant No.17.

3. It appears that this order was not complied with and ultimately on 01.11.2018 trial Court directed plaintiff

Devidas to comply with the order dated 22.01.2015. On the next date of hearing plaintiff Devidas was absent and the suit was dismissed under Order IX Rule 5 of the Code of Civil Procedure. Devidas sought restoration of the suit inter alia contending that he was a Legal Practitioner and was out of station on the relevant date concerning some professional work. The trial Court has allowed the restoration application subject to costs.

4. Although the learned counsel for the petitioners have made a valiant attempt to persuade me to hold that the negligence exhibited by Devidas did not warrant indulgence, I am not inclined to interfere with the order impugned. The order is discretionary and I am satisfied that considering that the suit is for partition, the discretion is not capriciously exercised. It would be appropriate if rights of the parties are worked out on merits.

5. The order impugned needs no interference in writ jurisdiction.

6. The petition is dismissed.

(ROHIT B. DEO, J.)