

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

WRIT PETITION NO.304 OF 2021

Rajmal s/o Abasaheb Ghumare

Petitioner

Versus

Shivram Vishwanath Ghumare & others

Respondents

Mr.V.S.Undre, advocate for the Petitioner.

Mr.S.E.Shekade, advocate for Respondents No.1 to 6.

CORAM : V.K.JADHAV, J.

DATE : 23rd February, 2021.

PC :

1 By the consent of learned Counsel for respective parties, the matter is heard finally at the stage of admission.

2 Petitioner, who is original plaintiff no.1, has instituted a suit bearing RCS No.48 of 2009 for partition and separate possession. In the pending suit, the petitioner has filed an application Exhibit-80 under Order I Rule 10 read with Order VI Rule 17 of the Code of Civil Procedure for impleading the parties as defendants no.11 to 13 to the suit. By an order dated 02nd January, 2020, the trial Court has allowed the said application Exhibit-80 subject to costs of Rs.3000/- with further

direction that if the amount of costs is not paid on or before 16th January, 2020, said application Exhibit-80 shall be treated as rejected.

3 Learned Counsel for the petitioner – original plaintiff no.1 submits that the petitioner, due to his poor economical condition, could not deposit the amount of costs on or before 16th January, 2020, however, he has filed an application on 06th February, 2020, seeking permission to deposit the said amount of costs, by filing an application Exhibit-83. By the impugned order dated 29th February, 2020, the trial Court has rejected the said application Exhibit-83.

4 The learned Counsel for the petitioner – original plaintiff no.1 submits that the said addition of parties is necessary for just disposal of the suit seeking partition and separate possession since those proposed defendants are the real sisters and brother of original defendant no.1.

5 Learned Counsel for the Respondents-original defendants strongly resisted the petition for the reason that the trial Court has passed conditional order while allowing the

application Exhibit-80 and since the said order is not complied with as per the time prescribed, the application Exhibit-80 came to be rejected automatically. In view of the same, the order impugned calls no interference.

6 The learned Counsel for Respondents-original defendants, in the alternative, submits that in case if this Court is inclined to allow this petition, the petitioner may be saddled with heavy costs.

7 It appears that the petitioner along with Respondents No.7 to 10 has instituted the suit for partition and separate possession. It further appears that the proposed defendants are the real brother and sisters of original defendant no.1 and as such, they are the necessary parties in the suit for partition. It further appears that the petitioner could not deposit the amount of costs of Rs.3000/- due to his poor economical condition and there is a delay of almost one month in depositing the said amount. In view of the same, I am inclined to allow this writ petition subject to further costs of Rs.5000/- (Rs. Five Thousand).

8 Hence, the following order:

(I) Writ Petition is hereby allowed subject to costs of Rs.5000/- (Rs. Five Thousand).

(ii) The impugned order dated 29th February, 2020, passed below Exhibit-83 in RCS No.48/2009, is hereby quashed and set aside.

(iii) The petitioner is permitted to deposit amount of costs of Rs.3000/- in compliance of the order dated 02nd February, 2020, passed below Exhibit-80, within two weeks from the date of this order.

(iv) In addition to this, the petitioner to deposit costs of Rs.5000/- (Rs.Five Thousand) before the trial Court, within the period of said two weeks to be paid to the respondents.

9 Writ Petition is accordingly disposed of.

(V.K.JADHAV)
JUDGE