

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

929 WRIT PETITION NO.10290 OF 2019

KALU SUPDU BAGUL THROUGH LRS SHRAVAN KAADU
BAGUL
VERSUS
TUMDU SUPDU BAGUL LRS ONKAR TUMDU BAGUL AND
OTHERS

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Advocate for Petitioner : Mr. Jain Gajendra Devichand.
Advocate for Respondent No.1 : Mr. Pushpak Gujrathi h/f Mr. V.
P. Latange.

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CORAM : V. K. JADHAV, J.
DATE : 15.01.2021

PER COURT :-

1. Heard both the sides.
2. The petitioner is original defendant No.1. Respondent Nos.1 to 7 have instituted the suit bearing Regular Civil Suit No.6 of 2011 for partition and separate possession. The petitioner / defendant No.1 has contested the said suit. However, the learned Judge of the Trial Court has forfeitted his right to cross-examine the respondents / plaintiffs, as the petitioner / original defendant No.1 remained absent though filed application for setting aside the said no cross order.
3. The learned counsel for the petitioner submits that on

the same day, on which the Trial Court has passed the no cross order, the petitioner / defendant has filed an application Exh.97 for setting aside the order. However, the Trial Court by impugned order dated 23.04.2018 has rejected the application Exh.97 and the petitioner / defendant has thereafter again filed an application Exh.101 for the same relief, however, by order dated 11.02.2019, the Trial Court has also rejected the said application.

4. The learned counsel for the respondents / plaintiffs submits that on 05.10.2015, the examination of P.W.1 was completed and the examination of P.W.2 Uttam K. Bagul on Exh.72 was completed on 03.07.2017. The petitioner / defendant No.1 has, however, filed an application Exh.97 for setting aside the order on 03.07.2017 for first time. The learned counsel submits that even the petitioner has not diligently attended the said application and thus by observing the same by order dated 23.04.2018, the Trial Court has rejected the application Exh.97. The learned counsel submits that the petitioner / defendant No.1 has filed another application Exh.101 on 25.06.2018 for the same relief and it was not in fact a review application thus the Trial Court has

rejected the said application by impugned order dated 11.02.2019. The learned counsel submits that the petitioner is playing the delaying tactics and even though the suit is of the year 2011, there is no further progress in the suit.

5. Though I find the laches and negligence on the part of the petitioner, however, it is a suit for partition and separate possession. It is also not disputed that the petitioner / original defendant No.1 is the member of the joint family.

6. In view of the same, I am inclined to allow this Writ Petition. However, it cannot be ignored that the petitioner has not persuaded the application Exh.97 though filed on 03.07.2017 till 23.04.2018. The Trial Court was constrained to observe that petitioner / defendant No.1 seems to be delaying the matter.

7. By order dated 22.08.2019, this Court has directed the petitioner to deposit an amount of Rs.25,000/- (Rupees Twenty Five Thousand only) before the Trial Court and if the said amount is deposited, this Court has further directed the Trial Court to adjourn the proceedings until the returnable date. The petitioner has deposited Rs.25,000/- (Rupees Twenty Five

Thousand only) before the Trial Court. However, the interim relief, as detailed above remained continued, till this date and as a matter of course, there is no further progress in the said suit.

8. In view of this, the petitioner is required to be saddled with the heavy costs. The petitioner has deposited Rs.25,000/- (Rupees Twenty Five Thousand only) in terms of the order passed by this Court before the Trial Court. In addition to that the petitioner shall deposit further costs of Rs.10,000/- (Rupees Ten Thousand only) before the Trial Court within four weeks from the date of this order and on depositing the remaining costs, the entire amount shall be paid to the respondents / plaintiffs. On this condition, the impugned order passed below Exh.97 is hereby quashed and set aside.

9. The Writ Petition is hereby partly allowed in terms of prayer clause "A" subject to costs of Rs.35,000/- (Rupees Thirty five Thousand only) with the following directions :

- (i) The petitioner / original defendant No.1 shall not seek any adjournment for cross-examination of the plaintiff's witness on any ground before the Trial

Court at least till the cross-examination of PW.1 and PW.2 is over.

(ii) The Trial Court shall expediate the hearing of the suit and dispose it of, at the earliest.

(iii) Writ Petition accordingly disposed off.

(V. K. JADHAV, J.)

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