

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10044 OF 2019

Shri Raghunath Sadashiv Kulkarni through
POAH Madhav Narayan Kulkarni and Anr. ... Petitioners

Vs.

Shri Narayan Rajaram Kulkarni and Ors. ... Respondents

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Mr. Prajakt M. Arjunwadkar for the Petitioners.

Mr. Dilip Bodake for the Respondent Nos.2A to 2D, 4, 5 and 7.

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CORAM: MADHAV J. JAMDAR, J.

DATE : 12th MARCH, 2021.

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1. Heard Mr. Arjunwadkar, learned Counsel appearing for the Petitioners and Mr. Bodake, learned Counsel appearing for the Respondent Nos. 2A to 2D , 4, 5 and 7.

2. By the present Writ Petition, the Petitioners who are original Defendant Nos. 5 and 6 are challenging order dated 22nd January, 2018 passed below Exhibit-247 and order dated 22nd June, 2018 passed below Exhibit-254 in Regular Civil Suit No. 44 of 2012 by the learned Joint Civil Judge, Senior Division, Karad. Exhibit 247 application was filed by the Petitioners i.e. original Defendant Nos. 5 and 6 through power of attorney for allowing them to lead evidence.

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As the said Exhibit -247 application was rejected by order dated 22nd January, 2018, application seeking review of that order was filed by Exhibit-254 application and the same was also rejected by order dated 22nd June, 2018.

3. Mr. Arjunwadkar, the learned Counsel appearing for the Petitioners contended that the Petitioners are very old persons and earlier they have appointed another constituted attorney and he has not looked after the case property.

4. On the other hand, Mr. Bodake, learned Counsel appearing for the Respondents pointed out that in fact no reliefs are sought against the present Petitioners in the suit and presently power of attorney is given to the son of the Plaintiff and therefore, applications after applications are filed malafidely. Mr. Bodake has relied on the affidavit in reply dated 17th October, 2019 pointing out the conduct of the Petitioners and the Plaintiff.

5. Mr. Bodake states that not only entire evidence is completed but the arguments of all the parties are also completed and the said suit is now kept for passing judgment.

6. A perusal of the plaint in Special Civil Suit No. 5 of 2004, shows that the same is filed for specific performance and reliefs are sought of specific performance only against Defendant Nos.1, 2, 7 and 8. Thus, it is clear that no reliefs are sought against present Petitioners i.e. Defendant Nos. 5 and 6. Apart from that it is important to note that on 4th December, 2004 Defendant Nos. 5 and 6 filed their written statement in the said suit and it is significant to note that the said written statement was not filed through constituted attorney but the same was filed personally by them. By the said written statement, the Petitioners have supported the Plaintiff's case.

7. It is recorded in the impugned order that the Plaintiff has completed his evidence in the year 2008 and Defendants have closed their evidence in the year 2012. The Defendant Nos. 5 and 6 are former parties as no reliefs are claimed against them and they have supported the Plaintiff's case in the written statement. Thus, it is rightly observed by the learned Trial Court that even if suit is decreed or dismissed no prejudice will be caused to the Petitioners i.e. original Defendant Nos. 5 and 6. The Trial Court has observed that to prolong the matter and cause harassment of other Defendants the application is filed as the Plaintiff's son has been

appointed as constituted attorney. Very cogent reasons are given for dismissing both applications below Exhibit-247 and 254.

8. In the facts and circumstances of this case, interference under Article 227 of the Constitution of India is not warranted. Therefore, the Writ Petition is dismissed.

(MADHAV J. JAMDAR, J.)