

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3074 OF 2017

SHIVRAJ DIGAMBAR GAWLI
VERSUS
VIMALBAI DHONDIBA SODJIR AND OTHERS

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Advocate for Petitioner : Mr. S.B. Solanke
Advocate for Respondent No.1: Mr. J.M. Murkute
Advocate for Respondent No. 2 & 4: Mr. A.R. Gaikwad
Advocate for Respondent No. 3: Mr. M.S. Karad

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 23rd JUNE, 2022

ORDER :

1. The petitioner is aggrieved by the order passed below Exhibit-173 in Regular Civil Suit No. 167/2007, by the learned Civil Judge, Senior Division, Gangkhed, thereby rejecting the prayer of the petitioner to correct the evidence of defendants no. 3 and 5.

2. The suit is filed for partition, injunction and other reliefs. During the course of recording of evidence, cross examination of defendant No. 5 was completed on 16.01.2016 and of defendant No. 3 was completed on 04.02.2016. On 01.03.2016, the petitioner filed application Exhibit-173 contending that while recording the cross examination certain incorrect statements are recorded, which may be corrected. This

application is rejected by the Trial Court. Hence, the present petition.

3. Heard the learned advocate for the petitioner and learned advocate for the respondents.

4. The record indicates that immediately after completion of cross examination of defendants No. 3 and 5 such application was not preferred. After the cross examination of defendants No. 3 and 5, three dates were given. Even on these dates no such application was preferred. The present application was preferred after two months gap, after the completion of cross examination of defendants No. 3 and 5.

5. When called upon by the Trial Court the learned advocate for defendant No. 5 informed the Court that said application is given by defendant No. 5 in person. The advocate has no concern with the said application. He further stated that if there is some mistake the same may be corrected.

6. The Trial Court has rejected the application holding that after completion of cross examination of defendants No. 3 and 5 on 16.01.2016 and 04.02.2016, three dates were given and thereafter after almost two months the present application is

filed. The Trial Court is justified in rejecting the application holding that it was the duty of the defendants to file such application, if there were mistakes, to bring it to the notice of Presiding Officer immediately. In my opinion, there is no illegality or perversity in the impugned order. There is no factual or jurisdictional error committed by the Trial Court in rejecting the application.

7. The Trial Court has kept the review application filed by the petitioner for arguments, along with the final arguments. It is thus clear that the review application is kept open for consideration by the Trial Court. In that view of the matter, I do not find any substance in the petition. No case is made out by the petitioner to warrant interference in the extra ordinary writ jurisdiction. The writ petition is therefore dismissed. No costs.

8. The amount of Rs.10,000/-, if any, deposited by the petitioner in this Court be sent to the Trial Court for appropriate orders.

[NITIN B. SURYAWANSHI, J.]