

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12383 OF 2021

PRANEET GAHININATH BADHE AND OTHERS
VERSUS
BABASAHEB KARBHARI BADHE AND OTHERS

Mr.Nitin Jagadale h/f Mr.Satish Gaikwad, Advocate for the petitioners.

(CORAM : BHARATI H. DANGRE, J.)

DATE : FEBRUARY 18, 2022

PER COURT :

1. Heard the learned Advocate for the petitioners and perused the writ petition alongwith the annexures appended to it. The perusal of the record would reveal that in RCS No.226/2010 filed before the Civil Judge, Jr.Division, Paithan for partition and separate possession in respect of the suit property, the original defendant Gahininath Karbhari Badhe was impleaded as a defendant. During the pendency of the suit, he died on 21/07/2010 and thereafter his heirs i.e. the present petitioners alongwith one Prashant brought on record as the legal heirs of Gahininath. Even Prashant was expired during the pendency of the proceedings.

2. On 15/02/2018, issues came to be framed and the evidence affidavit was filed by the plaintiffs on 17/02/2016. Since the defendants failed to appear, no cross order was passed against them on 29/11/2016.

3. When the annexures placed on record are perused, the order dated 29/11/2016 record that the defendants and their counsel were absent and therefore no cross order has been passed. An application came to be moved for setting aside the said order by the defendant Nos. 3, 4, 6 and 7 i.e. the present petitioners on 29/09/2018. On 16/08/2019, the learned Judge has recorded the following order :-

"Today plaintiff present but defendant and their Advocate called but absent, hence put up for orders."

Further on 11/11/2019, the following order was passed :-

"Today also defendant and his learned Advocate called, but none present. This itself shows that they are not interested to proceed. Hence the present application is rejected."

4. The aforesaid order clearly indicate that the defendants are not interested in defending the suit and the learned Judge is justified in

passing the orders refusing to permit them to cross examine. When the learned Advocate is specifically asked as to what is the stage of the proceeding, he states that the issues have been settled, but the aforesaid orders clearly reveal that the examination was scheduled in the year 2019. The suit is of the year 2010 and the learned Judge has rightly rejected the request of the defendants to set aside the "No Cross orders". Even after filing of the petition, almost a period of 2 years have lapsed., giving rise to an inference that the suit must be proceeded further, the writ petition is rejected.

(BHARATI H. DANGRE, J.)