

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

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NANDIWADEKAR

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Date: 2022.06.07
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WRIT PETITION NO.6932 OF 2017

WITH

INTERIM APPLICATION NO.861 OF 2021

Smt. Pramila Pramod Khade & Ors.

.. Petitioners

Versus

Nivrutti Lahuji Khade & Ors.

.. Respondents

Mr.Rahul P. Walvekar for the petitioners.

Mr.Chetan G. Patil a/w Mr.Mandar Bagkar for respondents 1 & 2.

CORAM : ROHIT B. DEO, J.

DATED : 6th JUNE 2022

P.C.:-

. The petitioner 1 is the plaintiff 1 in Special Civil Suit 280 of 2016 which is instituted seeking partition and separate possession.

2. The petitioner 1 is the widow of Mr.Pramod Khade who unfortunately expired in 2009. Defendant 1 is the father-in-law of the petitioner 1/plaintiff 1 and defendant 2 Uday Nivrutti Khade is the other son of defendant 1.

3. The petitioner is aggrieved by as many as four orders rendered by the learned trial Judge. The first order dated 16.7.2016 rejects an application seeking issuance of witness summons. The reason

recorded by the learned trial Judge is that it is not explained in the application why the witness is a necessary witness. The second order closes the evidence of plaintiff and is passed on 9.8.2016. The plaintiff sought recall of the said orders which applications are rejected by the learned trial Judge.

4. Having heard learned counsel for the parties, I am inclined to interfere with the orders impugned and give conditional opportunity to the plaintiff to adduce evidence. The learned counsel for the original defendants has invited my attention to order sheet to buttress the submission that the conduct of the plaintiff is suspect. The learned counsel for the defendants points out that an application for adjournment which the plaintiff preferred on 7.7.2016 was rejected and it was thereafter that the plaintiff sought permission to summon the witness to prove an alleged complaint lodged by defendant 1 with concerned police station.

5. From a strict legalistic perspective, learned counsel for the defendants would be right in the submission that the plaintiff could have been more diligent and indeed was expected to be more diligent. However, considering that the plaintiff is a widow and valuable property

rights are involved, it would be appropriate to give her an opportunity to lead evidence, particularly since her learned counsel has assured that the entire evidence shall be complete in two weeks from the next date of hearing in the trial Court. Such assurance is accepted as an undertaking to the Court.

6. The orders impugned are set aside.

7. It is made abundantly clear that indulgence is shown to the plaintiff only on the condition that it shall be her responsibility to take witness summons, to serve the same and that the evidence is recorded in the time framed stipulated supra.

8. Subject to observation and directions supra, particularly the time frame, the petition is partly allowed. Orders impugned are set aside and the plaintiff is permitted to examine the witnesses, subject to time frame stipulated supra.

9. Considering that the suit is instituted in the year 2010, the learned trial Judge is requested to expedite the hearing and to conclude the same, as far as possible, within the next nine months.

10. Petition is disposed of.

ROHIT B. DEO, J.