

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

WRIT PETITION 6998 OF 2022

Yashoda Pandurang Patil & Ors. ... Petitioners

V/s.

Pravin Pandurang Patil & Ors. ... Respondents

Mr. Kuldeep Nikam for the Petitioners.

CORAM : ROHIT B. DEO, J.

DATE : 22nd JUNE 2022

P.C.

1. The petitioners are defendants 2 to 6 in Regular Civil Suit 354 of 2003 which is instituted by Babaso Bala Patil seeking partition and the alternate possession.
2. The learned Trial Court decreed the suit vide judgment dated 30.06.2017 and held that the plaintiff is entitled to 5 Gunthas land out of suit property at serial 1 (B). Certain ancillary directions were issued by the learned Trial Judge.
3. Original defendant 1 Pravin Pandurang Patil preferred Regular Civil Appeal 74 of 2017 which is pending for final hearing.

4. During the pendency of the appeal, an application came to be filed on behalf of defendants 2 to 6 who are impleaded in the appeal as respondents 2 to 6, obviously because they are supporting the plaintiff, seeking production of certain documents. The application is presumably filed invoking provisions of Order 41 Rule 27 and is signed by three of the respondents. The application is not affirmed.

5. The application makes an interesting reading. According to the defendants 2 to 6, the defendant 1 contested the suit against their will and the documents are now produced by the defendants 2 to 6 to ensure that the plaintiff is not deprived of justice. The learned Appellate Court has rejected the application *inter alia* on the ground that the defendants 2 and 6 did not produce any evidence in the Trial Court and no reason is given for non production of the documents before the Trial Court. It is further noted that the defendants 2 to 6 have preferred the application seeking production of additional evidence after the completion of the arguments by the appellant /plaintiff and the defendant 1 / respondent 1.

6. I entirely agree with the reasons recorded by the learned Trial Court and further hold that the application clearly malafide. The

application is a proxy application. The defendants 2 and 6 did not contest the suit and the suit proceeded ex-parte. In the entire application, there is apparently no credible reason given for the inability of the respondents 2 to 6 to produce the documents in the Trial Court. The only justification given is that for different reasons, including the addiction from which the respondent 4 suffers the defendants 2 and 6 had asked the defendant 1 not to contest the suit.

7. The reasons given in the application, which I have noted, is not supported by affidavit, are clearly unacceptable, to put it conservatively. The petition is dismissed.

(ROHIT B. DEO, J.)