

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.1514 OF 2022

(Ramrao Shankar Sarode and others Vs. Smt. Sangita wd/o Govind Sarode and another)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. V. B. Bhise, Advocate for Petitioners.

CORAM: ROHIT B. DEO, J.

DATE: 23rd MARCH, 2022.

The petitioners are the defendants in Regular Civil Suit 41/2016 instituted by the respondents seeking decree of partition.

2. Two orders are assailed in this petition.

3. The first order is an order below Exhibit-40 seeking permission to place on record the written statement. The learned trial Judge, after noting that the application is preferred four years after the "No WS Order" was pleased to show indulgence and to permit the defendant 2 to place the written statement on record subject to costs of Rs.10,000/- (Rupees Ten Thousand) out of which Rs.5000/- (Rupees Five Thousand) are to be deposited in the account of the Taluka Legal Services Authority, Telhara.

4. Mr. Bhise strongly objects to the quantum of the cost and submits that the same be modified. In my considered view, the petitioners ought to be satisfied with the fact that the learned trial Judge has shown indulgence although the application to file written statement is moved four years after the no written statement order.

5. Considering the factual scenario, I do not think that the quantum of cost is disproportionate.

6. The second order which is challenged is an order rejecting the application Exhibit-39 purportedly preferred under Order VII Rule 11 of the Civil Procedure Code (Code). According to the defendants, the suit is barred under Order II Rule 2 of the Code.

The plaintiff disclosed in the said plaint the fact that Regular Civil Suit 9/2007 is decreed on 09.11.2012 and plaintiff is held entitled to one third share in the undivided share of defendant 1 in the suit. The second suit is premised on the assertion that the knowledge that there is an additional ancestral property was gathered only in May, 2016. The learned trial Judge has reasoned that the plaint cannot be rejected without providing an opportunity to the plaintiff to substantiate her assertion that she gathered knowledge of the existence of the additional property in 2016.

7. While I broadly agree with the observation that

the issue can be decided after the evidence is adduced, the articulation in *Dahiben v. Arvinbhai Kalyanji Bhanusali (Gajra) dead through legal representatives and others (2020) 7 SCC 366* will have to be kept in mind. The plaint must be read holistically and reasonably and it is neither necessary nor permissible for the trial court to consider the defence or for that matter even the averments in the application under Order VII Rule 11 of the Code. The consideration must be restricted only and only to the plaint averment and the documents on which the plaintiff is relying.

8. I see no reason to interfere in writ jurisdiction. The petition is dismissed.

JUDGE

NSN