

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

WRIT PETITION NO. 8329/2022

(Asha Trilokchandji Sawala Vs. Babulal Sukhrajji Khiwsara & ors.)

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

Court's or Judge's orders

Mr. P.R. Agrawal, Advocate for petitioner.
Mr. K.L. Dharmadhikari, AGP for respondent No. 9.

CORAM : VINAY JOSHI, J.
DATED : 22/12/2022.

Heard.

2. The petitioner is aggrieved by an order dated 14.07.2022, by which the Trial Court has declined to proceed ex-parte against the respondent No. 6 and 8.

3. The petitioner (plaintiff) has filed a suit for partition and separate possession. Except respondent Nos. 6 and 8, rest are duly served and they appeared in the proceeding. The petitioner made persistent efforts for service on respondent Nos. 6 and 8, however it does not yield. The record as well as impugned order disclose that twice summons were sent and the substitute services was effected by way pasting as well as paper publication. The petitioner has also applied for direction against defendant Nos. 3 to 5 who are brothers and sisters of respondent No. 6 and 8 to furnish the address who despite directions have not furnished the addresses. The petitioner again applied for substitute service, on which the bailiff report says that respondent Nos. 6 stays somewhere in

Manmad and respondent No. 8 at Aurangabad. This was the only information gathered by bailiff through their real brothers and sisters. It is apparent that the petitioner (plaintiff) made extensive efforts for service, but due to either avoidance or non-cooperation by siblings, the service of respondent Nos. 6 and 8 could not be effected. The suit of the year 2018 is pending for last five years on the same stage. Obviously, brothers and sisters of respondent Nos. 6 and 8 are present in the proceeding, meaning thereby, the absent party has knowledge of the lis. Moreover, their interest has been represented by their brothers and sisters. In view of that in order to bring end to the matter, petition can be disposed of with certain directions.

4. The petitioner (plaintiff) is directed to apply to the Trial Court seeking substitute service by way of paper publication for respondent Nos. 6 and 8. The paper publication in respect of respondent No.6 shall be made in the news paper circulated at Manmad and for respondent No. 8 at Aurangabad. The Trial Court shall allow said application and after stipulated period, shall proceed to pass ex-parte order against them, if they did not appear.

5. Petition stands disposed of in above terms.

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(VINAY JOSHI, J.)