

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

43 WRIT PETITION NO.462 OF 2019

PANDIT SAMPATRAO DESHMUKH
VERSUS
KAKASAHEB SAMPATRAO DESHMUKH AND OTHERS

Mr. Savita P. Kakade (Matkar), Advocate for the Petitioner.
Ms.Madhaveshwari S. Mhase i/by Lex Aquila, Advocate for the
Respondent Nos.1 to 9.

CORAM : SHARMILA U. DESHMUKH, J.
DATED : FEBRUARY 03, 2023.

PER COURT :

1. Heard.
2. The challenge in the petition is to the order dated 27.09.2018 passed in Special Civil Suit No.2 of 2013 rejecting the petitioner's application to reopen his evidence.
3. Special Civil Suit No.2 of 2013 filed by the petitioner-original plaintiff seeking partition and separate possession of the property. The Respondent No.1 is the full blood relative i.e. brother of the Petitioner and it is the case of the Petitioner that the Respondent No.1 in his capacity as Karta has purchased the suit property and as such it is a joint family property, in which the Petitioner has a share and thus, entitled for partition and separate possession. During the proceedings an application was filed below

Exh.177 seeking witness summons to one Anil Gaikwad, Police Inspector, Anti Corruption Bureau. Without this application being decided, the Petitioner filed evidence close pursis and the trial Court by order dated 25.06.2018 filed the application as the same need not be decided. Subsequently, the evidence of the defendant was led and during the evidence of the defendant, the Petitioner once again filed an application dated 27.09.2018 seeking recall of the order passed below Exh.177.

4. The provisions as far as summoning and attendance of the witness is contained in Order 16 Rule 1 which provides that the parties, after the issues are settled, shall present in Court a list of witnesses to which they propose to call either to give evidence or to produce document, or obtain summons to such persons for the attendance in the Court. For seeking issuance of witness summons, the party is required to file an application setting out the witness proposed to be summoned. In case summons is required for attendance of the witness, whose name does not appear in the list of witnesses submitted, sufficient cause is to be shown for omission the mentioned the name of such persons in the said list.

5. A perusal of the application filed below Exh.177 does not set out any explanation as to why name of the said witness was not mentioned in the list of witnesses, if any, filed by the Petitioner. As such, the application below Exh.177 did not meet the requirements of the provisions of Order 16 Rule 1 and was liable to be dismissed. The trial Court without deciding the application, in

view of the evidence close pursis had filed the application. By the impugned order, the trial court has held that although the petitioner had chance to press the application filed below Exh. 177, no efforts were taken by the Petitioner and as such rejected the application. In my opinion, considering that the application below Exh.177 itself did not meet the requirements of the provisions of Order 16 Rule 1, the application could not have been allowed by the trial Court and hence, there is no question of recall of the order passed on the application below Exh.177.

6. For the reasons above, I am not inclined to interfere with the impugned order. Writ Petition is devoid of merits and stands dismissed.

7. The Petitioner may file such application as deemed appropriate which will be decided by the Trial Court on its own merits and in accordance with law.

(SHARMILA U. DESHMUKH, J.)