

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2693 OF 2023

Vidyulata W/o. Babanrao Kamble (Jain) Petitioner

Versus

Shakuntala W/o. Sudhakar Rao Pangal

Since died, through L.Rs.

Ravindra Sudhakar Pangal

and others

.... Respondents

.....

Mr. Ajinkya A. Joshi, Advocate h/f Mr. S.V. Natu, Advocate for
the Petitioner

Mr. Shailesh P. Brahme, Advocate for Respondent Nos. 1-A & 3

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 09th MARCH, 2023

ORDER :

1. By this petition, filed under Article 227 of the Constitution of India, the petitioner assails the order passed by the learned Civil Judge, Senior Division, Latur, below Exhibit-65 in Special Civil Suit No.64 of 2011.

2. By application Exhibit- 65, moved by the plaintiff/petitioner, a prayer is made to send the sale deed dated 26/12/1972 along with register (अंगठे पुस्तक) and specimen thumb impression of the plaintiff for opinion of handwriting expert. By the impugned order, the said application is rejected, hence, the present petition.

3. Heard the learned advocate for the petitioner and the learned advocate for respondents. Perused the grounds raised in the petition, documents submitted along with the petition, and the impugned order.

4. Learned advocate for the petitioner submits that the trial Court has taken into consideration irrelevant aspects while passing the impugned order. The petitioner is denied fair opportunity to lead evidence in support of her case.

5. Learned advocate for the respondents, on the other hand, submits that the suit is of the year 2011, and the application was filed in the year 2014, which was ultimately rejected in the year 2021. The plaintiff's and defendants' evidence is over, and the suit is not posted for final arguments. Hence, the trial Court was justified in rejecting the application on the ground of delay.

6. Considering the peculiar facts of the present case, this Court is of the considered view that the application of the petitioner needs to be allowed in the interest of justice and with a view to give fair opportunity to the petitioner to contest the case on merits.

7. It is a matter of record that inordinate delay in considering the said application, however, the delay cannot be solely attributable to the petitioner alone.

8. In the result, the writ petition is allowed.

9. The impugned order dated 20/12/2021 passed by the learned Civil Judge, Senior Division, Latur passed below application 65 in Special Civil Suit No.64 of 2011, is quashed and set aside.

10 The petitioner shall pay costs of Rs.25,000/- to the respondents in the trial Court.

11. The sale deed dated 26/12/1972 along with register (अंगठे पुस्तक) along with specimen thumb impression of the petitioner be sent to the hand writing expert within a period of 2 weeks from the date of receipt of writ of this order.

12. The handwriting expert shall convey his opinion within 4 weeks from the date of receipt of the same.

13. The trial Court shall then proceed with the hearing of the suit in accordance with law, and the suit shall be decided within a period of 6 weeks from the date of receipt of the handwriting expert's opinion.

[NITIN B. SURYAWANSHI]
JUDGE

S.P Rane