

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10431 OF 2018

Janya Lala Mavchi & Others

...Petitioners

Versus

Bhaurao Aavshya Mavchi

...Respondent

Mr. Amol Sawant, Advocate for the petitioner.

Mr. A.S. Abhyankar, Advocate for respondent No. 1.

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 14th JUNE, 2023

ORDER :

1. This petition filed under Article 226 and 227 of the Constitution of India, challenges the judgment and order dated 18.02.2017 passed by learned District Judge, Dhule, in Miscellaneous Civil Appeal No. 69/2016, and judgment and order passed by Joint Civil Judge Junior Division, Sakri, in Miscellaneous Application No. 4/2015.

2. Respondent No. 1/plaintiff filed Regular Civil Suit No. 35/2007 against predecessors of the petitioners and others, for declaration of ownership and heirship and for permanent injunction in respect of two properties i.e. Gut No. 129 and Gut No. 194, situated at village Bopkhel, Taluka- Sakri, total admeasuring 15 Acres.

3. Defendants appeared in the suit and opposed the suit by filing written statement and say to Exhibit-5 application. Application Exhibit-5 was allowed in favour of the plaintiff. Defendants challenged the said order by filing Miscellaneous Civil Appeal No. 1/2009. During the pendency of same, suit came to be decreed exparte and this fact was disclosed to the plaintiff at the time of hearing of appeal. The petitioners since came to know about decree passed in the suit, preferred Miscellaneous Civil Application No. 4/2015 under Order 9 Rule 13 of Code of Civil Procedure, taking a ground that their advocate informed them that they need not appear in the suit as their appeal is pending and he will inform them the date. Since, there was no communication they did not attend the suit. Application was opposed by the respondents, Trial Court rejected the application by order dated 28.09.2016. The rejection of the order of the Trial Court is confirmed by the District Court in Miscellaneous Civil Appeal No. 60/2016. Hence, the present petition.

4. Heard the learned advocate for the petitioners and learned advocate for the respondent. Perused the memo of writ petition, annexures thereto, impugned orders and the citation relied upon by the learned advocate for the respondent.

5. Learned advocate for the respondent vehemently opposed the petition. By relying on *Sunil Poddar and others vs. Union Bank of India*, 2008 2 SCC 326 he submits that application filed by the petitioners does not fulfill the criteria laid down under Order 9 Rule 13 of CPC and hence, application is rightly rejected by the Trial Court as well as by the District Court.

6. Undisputably, immovable property admeasuring 15 Acres was the subject matter of the suit. Valuable and substantive rights of the petitioners in the said property are involved. Petitioners were not benefited by not attending the suit proceeding. Fair and reasonable opportunity needs to be given to the petitioners to contest the suit on merits.

7. In view of peculiar facts of the present case, though, the Trail Court as well as the District Court were not convinced with the reasons assigned by the petitioners for setting aside the exparte decree, this Court is of the view that petitioners cannot be deprived of their right of fair opportunity to contest the suit on merits as their substantive rights are involved. Hence, this Court is inclined to allow the writ petition.

8. In the result, writ petition is allowed.

9. Impugned judgment and order dated 18.02.2017 passed by the District Judge, Dhule in Miscellaneous Civil Appeal No. 69/2016 and judgment and order dated 28.09.2016 passed by Joint Civil Judge, Junior Division, Sakri in Miscellaneous Application No. 4/2015 is hereby quashed and set aside.

10. Since, the suit is of the year 2007, the Trial Court shall decide the same within three months from the date of receipt of writ of this order.

11. The petitioners shall pay cost of Rs. 50,000/- to the respondent in the Trial Court, within six weeks from today.

[NITIN B. SURYAWANSHI, J.]