

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.223 OF 2023

Kamalbai Appa Garje And Others

Petitioners

Versus

Ramkrushna Vishwanath Sanap And Others

Respondents

Mr. S.S. Dargad, Advocate for petitioners.

Mr. N.L. Jadhav, Advocate for respondent Nos. 1, 2, and 4.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 21st SEPTEMBER, 2023

ORDER :

1. Petitioners are aggrieved by the order passed by learned Civil Judge, Junior Division, Patoda, below Exhibit-69, in Regular Civil Suit No. 252/2010, thereby rejecting the application filed by petitioners to examine witness Mr. Waman Sanap on commission.

2. Suit is filed by petitioners/plaintiffs for partition and separate possession. Plaintiffs have led evidence by examining themselves and some witnesses in support of their case. Thereafter, plaintiffs sought to examine their uncle Mr. Waman Sanap and therefore summons was issued to him. Bailif, who

went to serve the summons reported that Mr. Sanap is suffering from paralysis and therefore he is not in a condition to attend the Court. Since, evidence of Mr. Sanap is important from the plaintiffs point of view, they filed application Exhibit-69 praying for examining Mr. Sanap on Court Commission. Trial Court rejected the application holding that bailif report does not indicate that Mr. Sanap is suffering from paralysis. It is stated in the report that witness has contended that his age is 75 years and therefore he is unable to attend the Court. Trial Court has referred to the medical certificate annexed by bailif with the report, but on going through said certificate, Trial Court was of the opinion that medical certificate does not indicate that witness is suffering from paralysis. It is further observed that defendants have annexed photographs along with Exhibit-73 which shows that said witness has attended a function. Trial Court therefore rejected application Exhibit-69. Hence, the present petition.

3. Heard the learned advocate for petitioners and learned advocate for respondent Nos. 1, 2, and 4. Perused the writ petition memo, annexures thereto and the impugned order.

4. Medical certificate filed by bailif along with report indicates that the witness is suffering from Chronic Inflammatory

Polyneuropathy, admittedly, he is 76 years of age and residing at a distance of 350 km from the place of trial. These aspects are ignored by the Trial Court while rejecting application Exhibit-69. Admittedly, Mr. Sanap is uncle of petitioners and respondents and therefore his evidence is important, which would enable the Trial Court to effectively decide the dispute between the parties. No prejudice is likely to be caused to the respondents if evidence of Mr. Sanap is recorded on commission. Trial Court has ignored these aspects while passing the impugned order. Therefore, impugned order is unsustainable.

5. In the result, writ petition is allowed.

6. Impugned order dated 02.12.2022, passed by learned Civil Judge, Junior Division, Patoda, Dist. Beed, in Regular Civil Suit No. 252/2010, below Exhibit-69, is hereby quashed and set aside.

7. Application Exhibit-69 is allowed.

[NITIN B. SURYAWANSHI, J.]