



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

940 WRIT PETITION NO. 13866 OF 2023

Bapurao Ramrao Pawar

....Petitioner

VERSUS

Saraswati Ramrao Pawar & others

.....Respondents

.....

Mr. R. K. Ashtekar, Advocate for the Petitioner.

Mr. J. R. Patil, Advocate for Respondent No. 1.

CORAM : R. M. JOSHI, J.

DATE : 3rd JULY, 2024.

PER COURT :

1. Petitioner who is Defendant No. 1 in Regular Civil Suit No. 67/2016 has preferred application Exhibit 74 seeking permission to lead evidence. This application is rejected by order dated 24.01.2023. Hence, this Petition.

2. Record indicates that evidence of Plaintiff was closed on 02.09.2021. Thereafter Trial Court has given opportunity to Defendants to lead evidence and ultimately evidence of Defendants was closed on 15.07.2022. Thereafter an application was filed by Defendant No. 1 permitting him to lead evidence by setting aside the said order. Said request was granted with cost of Rs. 1,000/-.

inspite of such order, no evidence was led hence, the order of closing of evidence came to be passed. Learned Trial Court found it to be not a case to exercise discretion to permit the Defendant to lead evidence and hence the impugned order was passed.

3. Learned counsel for Petitioner/Defendant submits that the suit is for partition and that it is necessary for this Defendant to lead evidence. Denial of his right to lead evidence will lead to injustice.

4. Learned counsel for Respondents vehemently opposed the said submission and has drawn attention of the Court to the conduct of Defendant No. 1. It is submitted that in case this Court finds it appropriate to permit Defendant to lead evidence, heavy cost may be imposed.

5. It is not in dispute that the suit is for partition. Thus, the rights of parties in respect of immovable property are involved herein. Though there is substance in the contention of learned counsel for the Respondent that inspite of opportunities, no evidence was led by Defendant No. 1, however, having regard to the nature of

suit, this Court finds it appropriate to give one last chance to Defendant No. 1 to lead evidence. Inconvenience caused to Respondents/Plaintiffs can be compensated permitting them to withdraw a sum of Rs. 10,000/- deposited by Defendant No. 1 before Trial Court. Accordingly, Trial Court to permit Plaintiffs to withdraw said amount.

6. In view of the above, impugned order dated 24.01.2023 passed in Regular Civil Suit No. 67/2016 is set aside. Parties are directed to appear before the Trial Court on 15.07.2024. Defendant No. 1 to lead his evidence on that day. In case Defendant No. 1 fails to lead any evidence, his right to lead evidence shall stand forfeited.

7. Petition is allowed in above terms.

(R. M. JOSHI)
Judge

dyb