

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6812 OF 2022
WITH
INTERIM APPLICATION NO. 8282 OF 2024
WITH
INTERIM APPLICATION NO. 8281 OF 2024

Sachin Bhagwan Jadhav

.. Petitioner

Versus

Bhagwan Pillu @ Vishnu Jadhav & Ors.

.. Respondents

-
- Mr. Rushikesh C. Barge for Petitioner
-

CORAM : MILIND N. JADHAV, J.

DATE : JUNE 21, 2024

P. C.:

1. Heard Mr. Barge, learned Advocate for Petitioner.
2. Interim Application No. 8281 of 2024 is taken out to bring on record legal heirs of Respondent No. 3 who expired on 27.08.2023. Similarly Interim Application No. 8282 of 2024 is taken out to bring on record the legal heirs of Respondent No. 5 who expired on 01.01.2023. As there is delay in filing both the Applications, there are prayers for condonation of delay and setting aside the abatement.
 - 2.1. Perused the Interim Applications. For the reasons stated therein, both the Interim Applicants are allowed in terms of prayer clauses (A) to (C) in the interest of justice. Amendment is permitted

to be carried out within a period of two weeks from today. Reverification stands dispensed with.

2.2. Both the Interim Applications stand disposed.

3. Present Writ Petition takes exception to the twin orders dated 18.02.2020 and 13.04.2022 passed below Exh. 65 and allow the Petitioner to lead evidence in RCS No. 506/2017 pending before the learned Trial Court.

4. Plaintiff has filed the Suit in 2017 seeking partition of the suit property. First order dated 18.02.2020 records that on the particular date since both Plaintiff and his Advocate were absent and the matter was kept for Plaintiff's evidence, the learned Trial Court passed a "No Evidence" order against the Plaintiff. Being aggrieved the Plaintiff approached the learned Trial Court by filing an Application seeking recall of the order dated 18.02.2020. The said Application is also rejected by stating that the reasons given by the Plaintiff are not true and proper reasons. Perused the Application which is appended at page No.40 and on perusal of the contents thereof as enumerated in unnumbered paragraph No. 2 thereof, I am inclined to accept the reasons which are given by the Plaintiff which did not enable the Plaintiff to remain present on 18.02.2020. Plaintiff's substantive right in the Suit for seeking partition against his own relatives in respect of

the suit property is lost by virtue of the said order and more so when the previous partition has taken place.

5. It is seen that in the Suit for seeking partition, there is also a Counterclaim filed by Defendants and therefore in the interest of justice, I am inclined to accept the case of the Plaintiff and set aside the orders dated 18.02.2020 and 13.04.2022. Resultantly the orders dated 18.02.2020 and 13.04.2022 are quashed and set aside.

6. Learned Trial Court is requested by this Court to determine RCS No. 506/2017 as expeditiously as possible and in any event within a period of one year from today positively. Parties shall co-operate with the learned Trial Court and not seek any unnecessary adjournments unless absolutely necessary. Needless to state that all contentions of the parties are expressly kept open in the Suit proceedings.

7. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

Amberkar

Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date:
2024.06.22
10:53:33 +0530