

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14233 OF 2023

Sharadbai Sonu Dongre

.. Petitioner

Versus

Dattatray Ramchandra Dongre

.. Respondent

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- Mr. Rokade Narayan G., a/w. Mr. Mohan Gawade, Advocates for Petitioner.
 - Mr. Aditya A. Joshi i./by Ms. Ketki Gadkari, Advocate for Respondent.
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 05, 2024

P.C.:

1. Heard Mr. Rokade, learned Advocate for Petitioner and Mr. Joshi, learned Advocate for Respondent.

2. This Writ Petition takes exception to the order dated 20.06.2023 passed by the learned Trial Court in Application below Exhibit-74 filed by the original Defendant No.3. The Application filed below Exhibit-74 sought setting aside of order dated 10.09.2018 passed by the Court whereby the learned Trial Court recorded that suit summons was duly served on the Petitioner (Defendant No.3 therein) but she did not appear in the Court and hence the suit was directed to proceed *ex parte* against her as also other Defendants who were duly served.

3. Mr. Rokade, learned Advocate for the Petitioner has drawn

my attention to the Application dated 13.04.2022 filed by the Petitioner (Defendant No.3 in the suit) which is at page No.37 of the Writ Petition and drawn my attention to unnumbered paragraph No.1 on page No.38 thereof. On perusal of the said paragraph under reference it is seen that it is not denied by the Petitioner that the summons which were served by Post were not received by some family member of the Defendant. He would submit that the Defendant No.3 infact resides in Mumbai and it is so stated in the aforementioned paragraph under reference and on the date on which the suit summons was served by post, she was not present in the village when it was served. Further until 30.03.2022 she was in Mumbai.

4. Mr. Joshi, learned Advocate appearing for the Respondent i.e. original Plaintiff in the suit proceedings would submit that the contents stated in the Application filed below Exhibit-74 are not true and correct. That Plaintiff has not prayed for any relief against the Defendant No.3 and Defendant No.3 is only a mere proforma party impleaded by the Plaintiff. To this in reply Mr. Rokade would submit that if the nature of the suit proceedings is perused it is evident that it is a partition suit between members of the same family who are parties to the suit proceedings having share / right and interest in the suit property including the Defendant No.3. It is Plaintiff who has impleaded the Defendant No.3 in the Suit. I find no wrong in the

submissions made by Mr. Rokade and I am inclined to accept the same.

5. Admittedly, the order dated 10.09.2018 is an *ex parte* order as also the order dated 26.06.2023 passed in the Application filed below Exhibit-74 is also an *ex parte* order. I have perused the Application filed by the Defendant No.3 and find that the reasons given therein are believable and in the interest of justice, the order dated 10.09.2018 *qua* Defendant No.3 i.e. Petitioner before me deserves to be set aside.

6. In the interest of justice in order to expedite and not to relegate the parties to multifarious proceedings, the order dated 20.06.2023 passed in Application below Exhibit-74 stands set aside. Application filed below Exhibit-74 stands allowed and consequential order dated 10.09.2018 directing the suit to be proceeded against Defendant No.3 *ex parte* is quashed and set aside. The Petitioner i.e. Defendant No.3 is directed to appear before the learned Trial Court alongwith an authenticated copy of this order and seek further directions in accordance with law.

7. Writ Petition stands allowed in terms of prayer clauses 'B' and 'C'.

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