

Amberkar

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 3258 OF 2023**

Rukhmini Shivaji Memane & Ors.

.. Petitioners

**Versus**

Sarjerao Suryawanshi & Ors.

.. Respondents

.....

- Mr. Kalpesh Patil for Petitioners
- Mr. Drupad Patil for Respondents

.....

**CORAM : MILIND N. JADHAV, J.**

**DATE : JANUARY 24, 2024**

**P. C.:**

1. Not on board. Mentioned. Taken on board.
2. Heard Mr. Kalpesh Patil, learned Advocate for Petitioner and Mr. Drupad Patil, learned Advocate for Respondents. Perused the praecipe dated 24.01.2024.
3. Present Writ Petition takes exception to the order dated 21.07.2022 passed below Exh. 253 in Spl. C.S. No. 149 of 2004.
4. I have perused the impugned order dated 21.07.2022. Application was filed by the Plaintiff for producing on record one sale deed and along with the sale deed, further 9 documents during the progress of the trial. Mr. Kalpesh Patil in his usual fairness at the outset placed before me the order dated 18.11.2022 passed by this Court in Civil Writ Petition No. 12861 of 2022 (Rukhmini Shivaji Memane &

Ors. Vs. Sarjerao Rajaram Suryawanshi & Anr.). Incidentally, the said order has been passed in the same suit proceedings whereby further additional issues have been framed and the matter was relegated back to the Trial Court with express directions that none of the parties will lead any further evidence and shall complete the hearing in the said suit. When this order dated 18.11.2022 was passed, the entire trial itself was already over and the suit was kept for final arguments. Both the learned Advocates are *ad idem* on the aforementioned factual aspects. Incidentally, it is seen that the order below Exh. 253 was passed on 21.07.2022 whereas the order passed by this Court in Writ Petition No. 12861 of 2022 was passed on 18.11.2022. Ideally, the issue which was the subject matter of Exh. 253 ought to have been taken up in the Writ Petition itself which the Petitioners failed to do.

5. It is clearly seen that the above conduct and action on the part of the Petitioners cannot be countenanced by this Court to now permit the Petitioners to file Application below Exh. 253. Such an Application ought not to have been filed after the order dated 18.11.2022 passed by this Court in the earlier Writ Petition. The Application merely seeks to prolong the disposal of the Suit. Present Petition therefore deserves to be dismissed but certainly such dismissal cannot be unconditional.

6. In view of the above, Petition stands dismissed. Petitioners are directed to pay costs of Rs. 10,000/- to Kirtikar Law Library, High Court, Mumbai within a period of two weeks from today.

7. Writ Petition is dismissed and disposed.

[ MILIND N. JADHAV, J. ]

Amberkar

RAVINDRA  
MOHAN  
AMBERKAR  
Digitally signed  
by RAVINDRA  
MOHAN  
AMBERKAR  
Date:  
2024.01.24  
20:00:02 +0530