

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5147 OF 2024

Pandurang Shankar Kharpude

.. Petitioner

Versus

Shantabai Vishnu Hivarkar & Ors.

.. Respondents

.....

- Mr. Vilas B. Tapkir for Petitioner
- Mr. S.G. Deshmukh i/by Mr. Sachin H. Deokar for Respondents

.....

CORAM : MILIND N. JADHAV, J.

DATE : JULY 09, 2024

P. C.:

1. Heard Mr. Tapkir, learned Advocate for Petitioner and Mr. Deshmukh, learned Advocate for Respondents.

2. Facts of the present case are extremely gross. In the Suit filed before the learned Trial Court, Plaintiffs are 4 sisters and Defendants are two brothers. Defendant Nos. 1 and 2 are controlling the properties belonging to the predecessor-in-title of the parties. Admittedly each of the party is entitled to 1/6th share in partition. Defendant No. 2 brother has agreed to the case of the Plaintiffs and does not object to the Plaintiffs receiving 1/6th share in the suit properties. Defendant No. 1 incidentally takes law into his own hands. Despite having been served with the suit plaint, he chooses not to file his written statement and defies the orders of the Court blatantly. Resultantly on 05.07.2007, the Suit stands decreed by declaring 1/6th

share each to the Plaintiffs and Defendants. There is direction in the decree to the Collector, Pune to effect division of the suit properties which are agricultural properties. What follows thereafter is a nightmare for the Plaintiffs. Defendant No. 1 embarks upon the long journey of protracting the execution of the decree. He files Civil Appeal in the year 2008 but ironically does not prosecute the same. Resultantly after a hiatus of 6 years, the Civil Appeal is dismissed by the District Court in default. From 2014 until today i.e. in the last one decade, Defendant No. 1 has been attempting to file Misc. Applications seeking restoration of the dismissed Appeal unsuccessfully. At times Application is filed by Defendant No. 1 but he has not prosecuted those Applications. Misc. Application is dismissed in default. Despite the Civil Appeal having been dismissed, Defendant No. 1 has the audacity of filing Application seeking injunction in the MCA proceedings seeking to restrain division of the suit properties execution.

3. In the above backdrop, the impugned order is passed on 02.12.2023. In the aforesaid timeline, there is absolutely no due diligence whatsoever reflected in the act of Defendant No. 1. Plaintiffs and Defendant No. 2 have been dragged mercilessly for the last 19 years by the actions of Defendant No. 1. Resultantly parties have also advanced in age and would like to bear and see the fruits of litigation

during the lifetime. In fact there is no litigation in the present case. All that the Plaintiffs and Defendant No. 2 desire is their legitimate share in the property which is unfortunately gobbled by Defendant No. 1 till today and he is refusing to part with the same. This Court shall not be a silent spectator to the antics of Defendant No. 1.

4. After hearing the submissions made by both the learned Advocates, I have impressed upon Defendant No. 1 to be considerate. Mr. Tapkir on taking instructions would submit that Defendant No. 1 has agreed to give, rather part with 50% of the suit property i.e. 50% of 1/6th share that would go to the benefit of each of the Plaintiffs - sisters. After hearing this submission, I have once again impressed upon Mr. Tapkir that Defendant No. 1 is in no bargaining position to make such an offer. In fact he should not do so since in law, he is required to give the legitimate share to the sisters. He also cannot bargain with the Court. I have also suggested a via media to Defendant No. 1 since it would be in all probability his case that he has been nurturing the suit land for long and hence, he would not like to part with the same. Therefore I have impressed upon Mr. Tapkir to reason out with Defendant No. 1 that if he does not wish to give the entire 1/6th share each to the Plaintiffs - sisters in so far as the balance area (50%) is concerned, he can offer the sisters monetary compensation in lieu thereof which would be in accordance with the

market value of the land / property as on date. Needless to state that if Defendant No. 1 concedes to this suggestion, it can be put to the Plaintiffs - sisters and Defendant No. 1 can also be given sufficient time to pay the same.

5. Mr. Tapkir would submit that he would take appropriate instructions. Equally Mr. Deshmukh would also submit that he would also put to the Plaintiffs - sisters to consider accepting monetary compensation in lieu of the balance area which would not be offered by Defendant No.1 out of the 1/6th share to the sisters. Both the learned Senior Advocates are requested by this Court to attempt a reconciliation between the parties.

6. Both the parties are directed to take appropriate instructions and inform the Court accordingly on the next adjourned date.

7. Stand over to **23rd July, 2024 at 2:30 p.m.**

[MILIND N. JADHAV, J.]

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Digitally signed
by RAVINDRA
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2024.07.09
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