

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9330 OF 2024

M/s. Techno Housing

.. Petitioner

Versus

Krishnabai Kanhu Bastaw

(since deceased) through LRs.

Chandrakant Kanhu Bastaw & Ors.

.. Respondents

.....

- Mr. Sanjeev Kadam, Senior Advocate a/w Mr. Raviraj S. Gamare for Petitioner
- Mr. Idris M. Vohra & Mr. Vishal Mundkar for Respondent Nos. 1 to 4

.....

CORAM : MILIND N. JADHAV, J.

DATE : JULY 29, 2024

P. C.:

1. Heard Mr. Kadam, learned Senior Advocate for Petitioner and Mr. Vohra, learned Advocate for Respondent Nos. 1 to 4. None appears for Respondent No. 5 who was original Defendant No. 1.

2. Facts in the present case are extremely convoluted but equally shocking. Suit is filed by 4 sisters primarily against the acts and omissions of their brother who is Defendant No. 1 in the Suit proceedings, *inter alia*, with respect to ancestral properties which are dealt with by Defendant No. 1. Reading of the Suit plaint shows that substantial ancestral properties have been dealt with by Defendant No.1 - Brother with Defendant No. 2 and thereafter Defendant No. 2

having dealt subsequently with Defendant No. 3. Defendant Nos. 2 and 3 are both the developers.

3. Mr. Kadam for Petitioner - Defendant No. 3 would submit that he was carrying out construction but there was *status quo* order on 21.12.2023, however the same was not continued from 01.01.2024. Be that as it may, if the parties approached this Court in December 2023, this Court would have immediately passed an order for disposal of the Suit which has been languishing in the Trial Court. Having not been done so, the matter has seen light of the day today. It is seen that Exh. 5 order has been passed by the Trial Court in favour of the Defendant No. 3 which has stood ground since the year 2024. However by virtue of the Misc. Civil Appeal, learned District Court has decided the same and that too after a lapse of 10 years. Being aggrieved with the order of the learned District Court in MCA, Defendant No. 3 has approached this Court by way of present Writ Petition. However considering the facts in the Suit plaint which are referred to and alluded to herein above, it would be in the interest of justice as also in the interest of the Plaintiffs that the Suit is proceeded with before the Trial Court in accordance with law.

4. None appears for Defendant No. 1 who is the brother of Plaintiffs today. Mr. Kadam would submit that Defendant No. 1 has been served. This Court cannot await his presence and will have to

pass appropriate orders. Hence, in the aforementioned facts and circumstances as also the timeline which has been noted by the Court, learned Trial Court is requested to dispose of RCS No. 178/2011 as expeditiously as possible and in any event within a period of six months from today strictly in accordance with law and after allowing both the parties to lead their respective evidence. Parties shall co-operate with the Trial Court and shall not seek unnecessary adjournment unless it is absolutely necessary in case of any urgency or emergency.

5. Needless to state that the impugned order passed by the learned District Court is sustained. However, this Court has not given its imprimatur on the findings returned by the learned District Court as also by the learned Trial Court and all contentions of the parties are expressly kept open in so far as their witness action is concerned.

6. With the above directions, Writ Petition stands disposed.

[MILIND N. JADHAV, J.]

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by RAVINDRA
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