



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2065 OF 2023

GANGADHAR ANTARAM DEPE AND OTHERS

VERSUS

SAMBHAJI ALIAS PRABHAKAR ALIAS PRABHU ANTARAM
DEPE AND OTHERS

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Mr. Sriram Vinod Deshmukh h/f Mr. Devang Rajendrraa
Deshmukh, Advocate for the Petitioners.

Mr. Madhav C. Ghode, Advocate for Respondent Nos.2 to 5.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 05th AUGUST, 2025.**

P.C.:-

1. Heard learned Advocates appearing for respective parties.
2. The petitioners impugn order dated 01.12.2022 passed by Civil Judge Senior Division, Ahmednagar below Exhibit-1 in Special Civil Suit No.9/2017, by which evidence of petitioners/plaintiffs came to be closed and suit is directed to proceed for evidence of respondents/defendants.
3. The learned Advocate appearing for petitioners submits that evidence of petitioners/plaintiffs was recorded on 19.09.2022. Thereafter, application was filed for issuance of witness summons to proposed witnesses. It was allowed. However, by returnable date service report was not received. Hence, plaintiffs took summons by hand and attempted serviced of notice. However, as Bailiff was not available, it could not be materialized. Thereafter,

Trial Court directed plaintiffs to bring witnesses on next date without fail. On next date, i.e. on 01.12.2022, Trial Court closed evidence of plaintiffs and directed that suit is posted for evidence of defendants. The learned Advocate further points out that plaintiffs then filed application below Exhibit-401 and prayed for recalling evidence closure order passed below Exhibit-1. However, said application is rejected. He would submit that plaintiffs took all necessary steps to bring their evidence on record and without any fault on their part, learned Trial Court passed evidence closure order.

4. The learned Advocate appearing for respondents, however, supports impugned order. He submits that suit has been expedited by this Court. The Trial Court has given sufficient opportunity to petitioners to lead their evidence, but petitioners/plaintiffs adopted tactics for protracting proceeding. Ultimately, Trial Court passed order closing their evidence, which is just and proper.

5. Having considered submissions advanced, it can be observed that plaintiffs recorded their own evidence on 19.09.2022 and thereafter, submitted an application for issuance of witnesses summons. Apparently, petitioners took all steps for service of notice to witnesses. However, report was not received for which petitioners cannot be blamed. Thereafter, petitioners attempted service of summons by taking humdast. However, as Bailiff was

not available their attempt was failed. In these circumstances, it is difficult to hold that petitioners were protracting proceeding or failed to delinquenty prosecute suit. The observation made by Trial Court cannot be countenanced to that extent.

6. Apparently, dispute pertains to immovable property and it is necessary that parties get fair opportunity to lead their evidence. In this background, this Court deems it appropriate to grant one more opportunity to petitioners to lead their evidence. At the same time, inconvenience caused to defendants needs to be compensated by granting some cost.

7. In result, Writ Petition is **allowed** in terms of prayer Clauses (C), (D) and (E) subject to condition that petitioners pay cost of Rs.5000/- to respondent nos.2 to 4. The cost shall be deposited with Trial Court within period of three weeks from today. The petitiners/plaintiffs shall take necessary steps for bringing their evidence before Court within period of two months from the date of this order. The Trial Court shall endeavour to decide suit within expeditiously and in any case, within period of six months from today.

8. Parties to co-operate.

(S. G. CHAPALGAONKAR)
JUDGE