



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6811 OF 2022

Baban Kisan Kauthale
VERSUS
Sitaram Kisan Kauthale And Others

- Mr. R. R. Karpe, Advocate for the Petitioner
- Mr. D. S. Patil h/f Mr. V. V. Kabade, Advocate for the Respondent No. 1, 2 and 5
- Mr. R. P. Cheble h/f Mr. S. S. Gangakhedkar, Advocate for Respondent Nos. 3 and 4

CORAM : R. M. JOSHI, J
DATE : SEPTEMBER 22, 2025

PER COURT :

1. By consent of both sides, heard finally at the stage of admission.
2. This Petition takes exception to the order dated 10.03.2022 passed by Trial Court below Exh. 101 whereby the request made by the Defendant No. 3 of setting aside order of closing evidence came to be rejected.
3. Heard learned Counsels for both sides.
4. There is no dispute about the fact that evidence of Defendant No. 3 was closed on 16.02.2019.

Application for setting aside the said order came to be filed on 13.03.2020.

5. Learned Counsel for the Petitioner/Defendant No.3 submits that in the interest of justice, Trial Court ought to have allowed the said application may be by imposing some reasonable cost.

6. Learned Counsel for contesting Respondent vehemently opposes the Petition by pointing out the conduct of Defendant No. 3 for filing Application after about a year of passing of impugned order.

7. Original suit is for partition and separate possession of the properties. Right, title and interest in the immovable properties, therefore, are involved in this case. In the suit for partition, Defendant No. 2 considered as Plaintiff and that he was within his right to substantiate his contention.

8. Unless mala fides are shown, the Trial Court was not justified in rejecting the said application. Instead the Trial Court could have imposed reasonable cost to be paid by Defendant No. 3 to Plaintiff. In the circumstances, impugned order deserves to be interfered

with.

9. In the result, impugned order dated 10.03.2022 passed below Exh. 101 stands set aside. Application Exh. 101 stands allowed subject to payment of cost of Rs. 5,000/- (Rupees Five Thousand) by Defendant No. 3 to Plaintiff. Trial Court to ensure that before Defendant No. 3 is permitted to lead evidence, the amount of cost is already been paid to Plaintiff. Trial Court is further directed to ensure that the Defendant No. 3 does not take any adjournment for leading his evidence. It would be open for the Trial Court to pass appropriate order in case Defendant No. 3 fails to lead evidence within reasonable time.

(R. M. JOSHI, J.)