



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

923 WRIT PETITION NO. 5142 OF 2022

Rajendra Hanmant Jadhav
(Deceased through LRs) & othersPetitioners

VERSUS

Revindra Hanmant Jadhav & othersRespondents

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Mr. D. A. Mane, Advocate holding for Mr. M. M. Patil, Advocate for the
Petitioners.

Mr. S. N. Patne, Advocate for Respondent Nos. 1 to 5.

CORAM : R. M. JOSHI, J.

DATE : 6th MARCH, 2025.

PER COURT :

1. This petition takes exception to the orders passed below Exhibits 40 and 46 in Regular Civil Appeal No. 37/2015 as the First Appellate Court has rejected the application filed by appellants/original defendants.

2. Respondents filed Regular Civil Suit No. 7/2011 for partition and separate possession of the suit properties. This suit came to be decreed on 26.02.2015. This judgment and decree is assailed in Regular Civil Appeal No. No. 37/2015 by original defendants. During the pendency of appeal, application Exhibit 40,

came to be filed under Order 41 Rule 27 of Code of Civil Procedure for leading additional evidence before the Appellate Court. Another application vide Exhibit 46 was filed for seeking permission by the legal heirs of the original defendant to file additional written statement.

3. Learned counsel for petitioners has drawn attention of the Court to the judgments of Hon'ble Supreme Court indicating that application under Order 41 Rule 27 of Code of Civil Procedure needs to be decided along with appeal and not independently. He places reliance on following judgments :-

- i) M/s Eastern Equipment and Sales Ltd. vs. Ing. Yash Kumar Khanna, AIR 2008 SC 2360.
- ii) North Eastern Railway Administration, Gorakhpur vs. Bhagwan Das (Dead) by Lrs., 2008 AIR SC 2139.
- iii) Sanjay Kumar Singh vs. State of Jharkhand
2022 Live Law (SC) 268
- iv) Hasinabi w/o Abdul Latif vs. Mohammad Sharif s/o Abdul Rajjak, Writ Petition No. 1608/2021.
- v) Subhash Dhanraj Sankla VS. Kaikhushroo @ Keki Phiroze

Noble and others, 2020(6) Bom.C.R. 344.

4. Learned counsel for Respondents does not dispute this position of law to that extent.

5. On rejection of application Exhibit 46, learned counsel for Petitioners submits that the petitioners would like to give clarification in the written statement filed by their father before the Trial Court. According to him, the said clarification is necessary and hence order passed below Exhibit 46 deserves interference. This contention is opposed by learned counsel for the Respondents/original plaintiff by contending that the petitioners are not claiming any independent right in respect of the suit properties and since they claim right through their deceased father, they are bound by the written statement filed by their father and hence, there is no reason to cause interference in the impugned order.

6. It is a settled position of law that application under Order 41 Rule 27 of Code of Civil Procedure is required to be decided along with the appeal. Order passed below application Exhibit 40 therefore deserves interference. Trial Court to decide the said application

while deciding the appeal. This Court has not expressed any opinion/view with regard to the observations of the Appellate Court. The said application be decided in accordance with law but along with the appeal.

7. Insofar as order passed below application Exhibit 46 is concerned, there is no dispute about the fact that original defendant i.e. father of present petitioners had filed written statement and petitioners do not claim any independent right in respect of the suit property. Whatever right is claimed therein is through their father. Hence, question of permitting them to file additional written statement does not arise. This Court, therefore, finds no reason to cause interference in the order passed below Exhibit 46.

8. Petition is partly allowed in above terms. Since appeal is of the year 2015 and pending for about 10 years, First Appellate Court is directed to expedite appeal and decide the same within a period of six months.

(R. M. JOSHI)
Judge