



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

914 WRIT PETITION NO. 9405 OF 2024

Vijaykumar Alias Tukaram Narayan GhogarePetitioner

VERSUS

Dnyaneshwar Narayan Ghogare & othersRespondents

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Mr. R. R. Deshmukh, Advocate for the Petitioner.

CORAM : R. M. JOSHI, J.

DATE : 12th MARCH, 2025.

PER COURT :

1. This petition takes exception to the order passed below Exhibit 113 by the Trial Court in Special Civil Suit No. 92/2021 whereby application filed by Petitioner/Defendant No. 3 for leading additional evidence came to be rejected with cost.

2. Respondents absent though duly served. Their absence indicates that they are not interested in opposing the petition. Petitioner is original Defendant No. 3 in Special Civil Suit No. 92/2021 filed by Plaintiff for partition and separate possession of the

suit property. There is no dispute about the fact that after the evidence of Plaintiff was over, Defendant No. 3 also led his evidence. However, since further evidence was not led, his evidence was closed by the Trial Court. On previous occasion, his request came to be accepted however, since no evidence was led, again evidence of Defendant No. 3 was closed. In the light of these facts, application Exhibit 113 came to be filed for seeking setting aside of no evidence order and permitting Defendant No. 3 to lead further evidence. Learned Trial Court dismissed the said application with cost of Rs.7,000/-. The said order indicates that owing to the conduct of Defendant No. 3 of not leading evidence and making application one after another, the impugned order came to be passed.

3. Learned counsel for Petitioner/Defendant No. 3 submits that further evidence of Defendant No. 3 is essential for the decision of the suit. According to him, along with application Exhibit 113, he had filed affidavit in lieu of evidence of one witness out of two to be examined. It is his submission that the Trial Court has not recorded any finding that the evidence sought to be led is not relevant for decision of the case.

4. Perusal of impugned order shows that no findings are recorded to the effect that the evidence led by Defendant No. 3 is sufficient to substantiate his contention and that further evidence sought to be led is not relevant. Needless to say that the party to the suit must be given reasonable opportunity to defend himself. In such circumstances, by imposing adequate cost the Trial Court ought to have allowed the said application.

5. In view of above discussion, petition is allowed. Impugned order is set aside. Application Exhibit 113 is allowed by imposing cost of Rs. 15,000/- payable to the Plaintiff. Trial Court to ensure that the cost is already paid to the Plaintiff before Defendant No. 3 is permitted to examine the witnesses. Defendant No. 3 to keep both the witnesses present before the Trial Court on 17.03.2025 for examining them. Unless Plaintiff seeks adjournment, no further opportunity be given to Defendant No. 3 to examine any of these two witnesses. If the Trial Court finds that Defendant No. 3 is delaying the proceeding before Trial Court, appropriate order as permissible in law may be passed.

6. In view of above order, an amount of Rs. 15,000/- from amount deposited in this Court be transferred to the Trial Court and Plaintiff be permitted to withdraw the same. Petitioner is permitted to withdraw remaining amount of Rs. 10,000/- deposited in this Court.

(R. M. JOSHI)
Judge

dyb