



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.8003/2023

Sau. Rasika w/o Janardhan Salve and anr. .Vs. Dilip Pandurang Dhattrak and ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. A. Sambaray, Advocate for petitioners.

Mr. A. M. Chandekar, Advocate for respondents.

CORAM : **ANIL L. PANSARE, J.**

DATE : **JANUARY 20, 2025**

Heard.

2. Petitioners – original plaintiffs, being aggrieved by dismissal of suit, have preferred an appeal before the District Judge, Gadchiroli being Regular Civil Appeal No. 33/2020. The petitioners filed application under Order XLI Rule 27 of the Civil Procedure Code, 1908, seeking permission to lead additional evidence. The application has been rejected by the First Appellate Court and, therefore, the present petition.

3. Learned counsel for the petitioners submits that petitioner No.1-plaintiff No.1 had, in fact, filed affidavit of chief-examination, but did not subject herself to cross-examination, upon advise of the counsel. The petitioners chose to examine petitioner No.2 – plaintiff No.2.

4. The petitioners intend to prove fraud played upon them by respondent No.1, their brother. According to the petitioners, respondent No.1, under the garb of executing the partition deed, had obtained signatures on relinquishment deed. Two relinquishment deeds were prepared. One to show that petitioner No.1 has relinquished her right and another is to show that petitioner No.2 has relinquished right. Petitioner No.1 was advised not to enter witness box and, therefore, was deprived of proving her case. Thus,

according to the petitioners' counsel, the petitioners should not suffer for the incorrect advise given by their counsel.

5. At this stage, counsel for the respondents submits that only one relinquishment deed was executed. He has invited my attention to issue No.1 framed by the Trial Court, which shows that only one relinquishment deed dated 25.02.2016 was executed.

6. Thus, it appears that false statement has been made by the petitioners' counsel that two relinquishment deeds were executed. It further appears that the relinquishment deed was registered before the Sub Registrar. The order impugned indicates that the petitioners have taken conscious decision to not subject petitioner no.1 to cross-examination but to rest their claim on the basis of petitioner No.2's evidence.

7. On taking conscious decision, the First Appellate Court has taken note of the application Exh.-65 filed before Trial Court seeking permission to lead evidence of petitioner No.2 instead of petitioner No.1. The application itself discloses that after due diligence the application was filed. The Court further noted that it is not the case of petitioner No.1 that the said application was given without informing her. It is further not her case that she was not consulted before giving application Exh.-65.

8. Thus, it is evident that the petitioners chose to prove the case by relying upon evidence of petitioner No.2. They have made an attempt to prove that the signatures on relinquishment deed executed by them was obtained by playing fraud by respondent No.1. The suit came to be dismissed. The appeal was then preferred in the year 2020. The petitioners have not uttered a word in the appeal memo as regards the so called incorrect advise given by their counsel before the Trial Court to not subject petitioner No.1 to cross-examination. It is only after three years of filing the appeal, the petitioners came up

with the plea of additional evidence under Order XLI Rule 27 of the CPC.

9. The manner in which the petitioners have conducted themselves, disclose a clear case of after thought. The petitioners having failed to get the desired result, now filed the application to lead additional evidence. The First Appellate Court has rightly noted that there is a complete absence of due diligence; rather, the decision was conscious.

10. In any case, the argument that petitioner No.1 intends to prove the relinquishment deed allegedly executed by her in favour of respondent No.1, is found to be an argument based on incorrect facts. That being so, no interference is called for in the impugned order. The petition is, accordingly, dismissed. No order as to costs.

(Anil L. Pansare, J.)