

MHAH220012342015



R.C.S.No.198/2015

Mahesh and Ors.

Vs.

Sulbha and Ors.

ORDER BELOW EXH.33

This is an application filed by defendant No. 3 and 4 for setting aside ex-parte order passed below Exh.1 of dated 30.11.2016 with permission to file the written statement and counterclaim.

2. It is the contentions of defendant No.3 and 4 that due to illness defendant No. 4 she is under treatment. Defendant's family member are suffering from Corona disease. Further, they contended that defendant No. 3 is service in Panchayat Office, Jamkhed. Therefore, they could not appear in Court. Hence, by passing an order below Exh.1 on 30.11.2016, suit proceeded ex-parte against defendant No. 3 to 5. It is further contentions of defendant No. 2 that for proper adjudication and in the interest of justice ex-parte order be set aside and she be permitted to file his written statement. Therefore, defendant No.2 filed present application for setting aside ex-parte order passed below Exh.1 of dated 30.11.2016 with permission to file written statement with counterclaim.

3. Plaintiffs filed their say on overleaf of the present application wherein, he submitted that application may be allowed subject to heavy costs. Ld. Advocate Mr. A. A. Mhetre for defendant No.1 orally submitted that there is collusion between plaintiff and defendant No. 3 and 4. The application is filed after lapsed of more than 5 years. Therefore, application be rejected.

4. Heard both sides.

5. Perused the record. After perusal of record, it appears that plaintiffs filed the present suit for partition and declaration

6. It is the contentions of defendant No. 3 and 4 that due to illness defendant No. 4 she is under treatment. Defendant's family member are suffering from Corona disease. Further, they contended that defendant No. 3 is service in Panchayat Office, Jamkhed. Therefore, they could not appear in Court. Application is supported by affidavit. However, the present suit is relating to the immovable property. If the application is allowed no prejudice will cause to plaintiffs. Per contra it will avoid the multiplicity of the proceeding. For fair trial, it is necessary to give an opportunity to defendant No. 3 and 4 to defend the suit. If an opportunity is not given to defendant No. 3 and 4 it will cause hardship to them. However, delay caused by defendant No. 3 and 4 for appearing in the present suit and filing written statement can be compensated by imposing costs on them. So in the interest of justice, I proceed to pass the following order :-

ORDER

1. The application is allowed with costs.
2. Exparte order passed below Exh.1 of dated 30.11.2016 against defendant No. 3 and 4 is hereby set aside subject to payment of costs of Rs.5,000/- (Rs. Five Thousand only) to plaintiff.
3. Defendant No.3 and 4 is permitted to file their written statement on payment of above mentioned costs.
4. If defendant No.3 and 4 failed to comply the present order on or before next date then the present order is automatically set aside.

(Dictated and pronounced in open Court)

Date : 03/07/2025.

(R. B. Raut)
2nd Jt. Civil Judge, Junior Division,
Karjat, Dist. Ahmednagar