

ORDER PASSED ON EXH. 76 IN SPL. C.S. NO. 04/2011.

1. Defendant no 8 and 9 moved this application to set aside the order of no W.S. passed against them i.e. on 03.12.2012 against defendant no. 8 and on 27.03.2015 against defendant no. 9, on the grounds that they are old aged persons, no evidence is yet started and lastly they are bona fide purchasers. So opportunity to be given to them to file their W.S. On the above said grounds they prayed to allow their application.
2. Plaintiffs filed their say. They strongly objected to this application. That the case is fixed for evidence and order of no W.S. is passed in the year 2012 and 2015. Hence, the application to be rejected with cost.
3. I heard learned advocate appearing for the plaintiffs. Learned advocate appearing for the defendants no. 8 and 9 is repeatedly called absent. This application is pending since 2017, so application it is taken for the determination on merit.
4. Suit, for partition and separate possession. To determine this application, I gone through the pleading of the

plaintiffs. They pleaded that, the sale deed executed in favour of defendant no. 8 and 9 are null and void and not binding on them. In the application which is for the consideration it is contended one of the grounds to set aside the order that they are the bona fide purchasers.

5. Suit is for partition and on the other hand, the defendant no. 8 and 9 are the bona fide purchasers as per the defence. So, to determine the issue between the parties i.e. whether defendant no. 8 and 9 is bona fide purchaser or not and also whether the sale deed which is executed in favour of defendant no. 8 and 9 is null and void and not binding on the plaintiffs. To decide this point it is possible only after giving the opportunity to the parties to put up their case and defence.

6. Now, I considered the order which is passed against defendant no. 8 i.e. on 03.12.2012 against the defendant no. 9 on 27.03.2015. The application presented by the defendant no. 8 and 9 is dated 18.08.2017 that means application by the defendant no. 8 after a span of five years and defendant no. 9 after a span of three years.

7. From the record it appears that the defendant no. 8 and 9 appear through their advocates, but in time they have not

filed W.S. so, an order is passed against them. Here, I say that the defendants were having knowledge about the proceeding which are filed against them. Even then they failed to file their written statement in stipulated time. Again here, I say that the defendant no. 8 and 9 moved this application merely to prolong the matter because the case is fixed for evidence. The conduct of defendant no. 8 and 9 is to prolong the matter. As I said above, to determine the questions arises between the parties, the defendant no. 8 and 9 must get an opportunity to put up their defence. On the other hand, they are causing the delay and play the tracks to prolong the matter to the said defendants, a saddle cost is to be imposed on them. By imposing a cost of rupees three thousands to defendant no. 8 and cost of rupees one thousand to defendant no. 9. The order of no W.S. passed against them is to be set aside. Hence, I pass the following order:

: ORDER :

1. Application is allowed.
2. The order of no W.S. passed against defendant no. 8 on 03.12.2012 and against defendant no. 9 on 27.03.2015 are

set aside.

3. Defendant no. 8 for causing the delay to pay cost of rupees 3,000/- (Three thousands only) and defendant no. 9 of rupees 1,000/- (One thousand only).

4. The cost paid by the defendant no. 8 and 9 to be given to plaintiff no. 1.

5. Application is disposed off accordingly.

(Advocates and parties to note)

Dt. 05-06-2018
Majalgaon

(R.K. Gujjar)
Civil Judge Senior Division,
Majalgaon.