

MHLA110003332016



Order below Exh.87 in RCS No.314/2014
Shashikala & Ors. Vs. Gunderao & Ors.

By this application defendant No.2 has requested to set aside the no WS order dated 11/03/2016 passed against her and to accept the WS, on the grounds stated in the application. The contents of application in short are:- That defendant No.2 failed to file her WS within stipulated period and thus, the Court has passed no WS order dated 11/03/2016 against her. That the suit summons came to be served upon defendant Nos.1 and 2 on 19/04/2014. Defendant No.1 was remaining ill and defendant No.2 was looking after him. Therefore, she failed to file her WS within time.

2. Thereafter, on 03/10/2016 defendant No.1 died and his death certificate is filed at **Exh.40**. That original plaintiff Shashikala is also dead and that's why, the defendant No.2 was not sure whether the suit will proceed further or not. However, after few days the defendant No.2 came to know that the legal heirs of original plaintiff Shashikala are proceeding with the suit. It is necessary to bring all the true facts before this Court and thus, it is necessary to permit defendant No.2 to file her WS. The suit is in respect of valuable immovable property and it is necessary to hear this defendant by way of her WS. In case, if she is not permitted to file her WS then irreparable loss will be caused to her. Hence, the application.

3. Plaintiffs have filed their say and raised strong objections. The contents of their say in short are:- That no WS order dated 11/03/2016 came to be passed against defendant No.2 as she failed to file her WS within time. A period of 6 years 7 months and 4 days has been lapsed and despite this, defendant No.2 has not taken necessary steps for proceeding with the matter. Defendant No.2 has failed to disclose the disease from which defendant No.1 was suffering and the nature of treatment going on upon him. She has not filed any medical certificate or copy of prescription.

4. The matter is at the fag end and the plaintiffs have concluded their final arguments. But some of the defendants have again re-opened the trial by way of adducing their evidence. Defendant No.2 has filed this application just to prolong the matter. Hence, requested to reject the application.

5. Perused application and say. Heard learned advocate Shri U.S.Jadhav for defendant No.2 and learned advocate Shri. J.B.Dhumal for plaintiffs. Both of them have submitted in the line of their application and say respectively. I have carefully considered the rival submissions of both the learned advocates. Also gone through the record of the case, which shows that the original plaintiff Shashikala has filed this suit for partition and separate possession of the suit properties described in para No.2 of the plaint. Original plaintiff Shashikala was daughter of defendant Nos.1 and 2 and sister of defendant Nos.3 and 4. Record further shows that deceased defendant No.1 and defendant No.2 appeared through their counsel and as they failed to file their WS, no WS order came to be passed against them on 11/03/2016. Defendant

Nos.3 and 4 have filed their WS at Exh.37 and issues are framed at Exh.57 on 19/09/2019.

6. Record further shows that plaintiffs have examined Shri Sachin Angad Nelwade, son of original plaintiff, as PW No.1 at Exh.58 and closed their evidence vide pursis at Exh.64 on 26/09/2019. Defendant Nos. 3 and 4 have examined defendant No.3 Shri Namdev Gunderao Sawant as DW No.1 at Exh.65 and further examined scribe namely Shri Sayyad Riyaz as DW No.2 at Exh.80. Frankly speaking it seems that the matter is pending for further evidence of defendant Nos. 3 and 4. Let it be so, from the contents of application it seems that defendant No.1 was ill and that's why defendant No.2, being his wife and having responsibility to look after him, failed to file her WS within stipulated period. Defendant No.2 has filed some medical case papers belonging to defendant No.1 at list below Exh.90. All these medical case papers are of the year 2013 and onwards. Admittedly, the delay of approximately more than six years has been caused by defendant No.2 in moving this application. The period of two years spent during the Covid-19 Pandemic if deducted, still there is delay of approximately four years. The medical case papers of defendant No.1 are on record. Thus, it cannot be stated that the ground of illness of defendant No.1 mentioned in the application is completely false and unbelievable. Considering the nature of suit, grounds stated in the application, rights of the parties involved and the fact that some important facts which can be brought on record, if defendant No.2 is permitted to file her WS, in my opinion, it is necessary to permit defendant No.2 to file her WS. However, while doing so, the delay caused cannot be neglected and for that

purpose it is necessary to impose cost upon her. While determining the cost amount this Court is under obligation to consider the age of defendant No.2, her source of income, if any, and her relations with the plaintiff and other defendants. Hence, in my opinion, imposing cost of Rs.2,500/- will meet the ends of justice and will not cause any undue hardship on defendant No.2. In the result, I pass following order:-

ORDER

1. No WS order dated 11/03/2016 passed against defendant No.2 is set aside subject to cost of Rs.2,500/- to be payable by her to plaintiffs on or before next date.
2. After payment of cost amount and after its acknowledgment, the WS of defendant No.2 be taken on record.

Date :23/02/2023

(Ashish B. Marlecha)
Civil Judge (Sr.Dn.),
Nilanga, Dist. Latur.