



Order below Exh.434 in RCS No.181/2008
Kalubai & Ors. Vs. Pandurang & Ors.

This is an application filed by defendant No.13 for setting aside ex-parte order on the grounds mentioned in the application. The contents of application in short are:- the present suit is filed for partition, separate possession and perpetual injunction. That the suit is relating with ancestral and joint family properties, wherein defendant No.13 also has his undivided share. That defendant No.13 is illiterate person and he is working in the joint family properties. He has no knowledge of law and he is residing in rural area. Therefore, defendant No.13 failed to appear before Court and ex-parte order came to be passed against him.

2. That the plaintiff and rest of the defendants are trying to disposes him from ancestral properties under the grab of orders passed by Civil Court. Accordingly, defendant No.13 started making inquiry and came to know about the present suit. That the present suit is in relation with valuable properties and this defendant No.13 has undivided share in it. If defendant No.13 is not permitted to file his WS and contest the claim of plaintiffs, then serious prejudice will be caused to his rights. Hence, the application.

3. Plaintiffs have filed their say and raised objections on several grounds. Perused application and say. Heard learned advocate Shri.P.L.Narhare for defendant No.13 and learned advocate Shri A.S.Makane for plaintiffs. Both of them have submitted in the line of their application and say respectively. Record shows that plaintiffs have filed this suit for partition, separate possession and perpetual injunction in respect of the suit properties described in para No.1, 1-A and 1-B of the plaint. Defendant No.1 has filed his WS at **Exh.35** and defendant No.35 at **Exh.114**. Defendant No.20 has filed his WS at **Exh.145** and in such manner the defendants have filed their respective WS at various exhibit marks. The suit is proceeding either ex-parte or without WS of other defendants. Issues are framed at **Exh.42**.

5. Record further shows that plaintiffs have examined some witnesses on their behalf. After closely perusing record it reveals that suit summons came to be served upon defendant No.13 and as he

appeared through his counsel on 17/04/2012 vide **Exh.133**. As he failed to seek adjournment for filing WS, No WS order came to be passed against him on 10/07/2012. From the contents of plaint, it reveals that defendant No.13 is nephew of original plaintiff and son of defendant No.1. From the contents of application it appears that it has been moved on the ground that defendant No.13 is farmer and he has no knowledge about the Court proceedings. The fact of which judicial note can be taken by this Court is number of civil suits are pending between plaintiff and defendants. Defendant No.13 is appearing in other suits and is also contesting them. Be that as it may. At this juncture, learned advocate Shri P.L.Narhare appearing for defendant No.13 requested to consider this application as an application for setting aside No WS order instead of an application for setting aside ex-parte order, as mentioned in it. I find no hesitation in accepting the request of learned advocate for defendant No.13. No prejudice will be caused to plaintiffs and other co-defendants. Thus, considering the nature of suit, reliefs claimed, to grant an opportunity of fair trial and the loss which defendant No.13 might suffer if he is not permitted to contest the suit, in my opinion, it is necessary to set aside No WS order passed against him. However, while doing so, the inordinate delay of more than 10 years caused by him cannot be neglected and for that purpose it is necessary to exemplary cost upon him. Because once he is permitted to file WS, additional issues might be required to be framed and the suit will again proceed from its initial stage. For these reasons, I pass following order:-

ORDER

1. No WS order dated 10/07/2012 passed against defendant No.13 is set aside subject to cost of Rs.10,000/- (Rs.Ten Thousand only) to be payable by him to plaintiffs on or before next date.
2. After payment of cost amount and its acknowledgment by plaintiff, the WS filed by defendant No.13 will be taken on record.

Date :03/09/2024

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