

Order below Exh.74 in RCS No.398/2016

By this application defendant Nos.2 to 4 and 6 have requested to set aside the order dated 10/01/2024 by which they are prevented from adducing their evidence, on the grounds mentioned in the application. Plaintiffs have raised objections. Perused application and say. Heard learned advocate Shri S.A.Sabnis for defendant Nos.2 to 4 and 6 and learned advocate Shri J.V.Dhumal for plaintiffs. Both of them have submitted in the line of their application and say respectively.

2. Record shows that plaintiffs have filed this suit for partition and separate possession in respect of the suit properties described in para No.3 of the plaint. The suit is proceeding without WS of defendant No.1 and ex-parte against defendant No.5. Defendant Nos.2 to 4 and 6 have filed their WS at **Exh.27** and **Exh.56** respectively. Issues are framed at **Exh.60** on 20/09/2022. Plaintiffs have examined plaintiff No.1 at **Exh.65** and her cross examination came to be recorded and completed on 13/09/2023. The evidence of plaintiffs came to be closed by order dated 01/11/2023. The evidence of defendant Nos.2 to 4 and 6 came to be closed on 10/01/2024. Thereafter, plaintiffs moved an application at **Exh.68** for setting aside the evidence close order, which came to be allowed by order dated 13/03/2024. Accordingly, plaintiffs have examined their further witness and vide order dated 09/08/2024 the evidence of plaintiffs again came to be closed.

3. This application is filed by defendant Nos.2 to 4 and 6 on 25/09/2024 i.e. approximately after more than eight months of passing of impugned order dated 10/01/2024. However, this delay cannot be entirely attributed upon defendant Nos.2 to 4 and 6 because in the mean time plaintiffs have got set aside the evidence close order passed against them on 01/11/2023. Still, when the evidence of plaintiffs again came to be closed on 09/08/2024, it was the duty of defendant Nos.2 to 4 and 6 to move this application immediately. Be that as it may. Considering the nature of suit, reliefs claimed and to grant an opportunity of fair trial, in my opinion, it is necessary to permit defendant Nos.2 to 4 and 6 to adduce their evidence. No prejudice will be caused to plaintiffs. However, while doing so, the delay of approximately more than two months cannot be neglected and for that purpose it is necessary to saddle cost upon defendant Nos.2 to 4 and 6. In the result, I pass following order:-

ORDER

1. The order dated 10/01/2024 passed against defendant Nos.2 to 4 and 6 preventing them from adducing their evidence is set aside subject to cost of Rs.500/- to be payable by them to plaintiffs on next date.

2. After payment of cost amount and its acknowledgment by plaintiffs, the evidence of defendant No.3 at Exh.78 will be read and recorded.

Date :01/10/2024

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