

R.C.S.No 277/2018
(CNRNO-MHSNO60011502018)

BELOW EXH. 23
(Passed on 14/06/2019.)

1. This application is filed on behalf of defendant no. 2 to 5 and 7 for setting aside the No.W.S. order.

2. It is contended that, the suit is filed by plaintiff for partition and separate possession. Defendants though appeared in suit they couldn't collect the relevant documents within prescribed period. It is contended that it is necessary to bring on record the defence of defendants. If they have denying, they would suffer irreparable loss. Further, no such loss would be caused to the plaintiff rather it would help the Court to decide the matter on merits. Therefore, defendants have prayed for allowing their application to setting aside No.W.S. order passed against them.

3. The application is supported by affidavit of defendant no.2. The written statement is also filed along with the application. Plaintiff filed reply on the back-leaf of application and strongly opposed the contents thereof and prayed for rejection of application.

4. I have heard learned advocate for both sides and also gone through the record of suit. It is seen that the suit is filed for partition and separate possession of agricultural land. The suit is for partition of ancestral properties of plaintiff and defendant Nos. 1 to 7. Now the suit is posted for steps by plaintiff against defendant Nos. 6 and 8. Today, defendants/applicants have appeared before the Court and prayed for setting aside the No.W.S. order by filing present application.

5. As stated above, the suit is for partition and separate possession wherein as per the settled principles of law all the plaintiffs are defendants and vice-versa. Considering this aspect and the facts and circumstances of the suit, in my considered opinion, it would be proper to give an opportunity to the defendants/applicants to contest the suit. It would help this Court to decide the question in controversy between the parties to the suit on merits. Plaintiff would not suffer any irreparable loss. The delay caused in the trial due to the failure of the applicants/defendants to file written statement on record within prescribed period can be compensate by way of costs to be paid to the plaintiff. With these aspects, I pass following order.

ORDER

1. Application below Exh.23 is allowed subject to cost of Rs.300/- (Rs. Three hundred only) to be paid to the plaintiff.
2. The written statement of the defendant nos. 2 to 5 and 7 to be taken on record on payment of the cost.

Place : Miraj
14/06/2019.

Sd/-xxx
(Swati B.Naiknavare-Garad) Date :
Civil Judge, Junior Division
Miraj.