

Reg. Civil Suit No. 185/2016
Dattatray Vs. Ganpat & ors.

Order Below Exh.72
(Passed on 05th June, 2023)

This is an application filed by defendant No.8 to 12 & 15 for setting aside an *exparte* order passed against them with a permission to file written statement on record. The defendants have submitted that the present suit has been filed for partition of the suit property by meets and bounds and for perpetual injunction. In the present suit, there are total 18 defendants. The plaintiff has mentioned in paragraph No.3 of the plaint that he is not claiming any relief against defendant No. 7 to 18 and they are made formal parties just to avoid technical complications. The *exparte* order came to be passed against the defendants vide order dtd.20.12.2019. In fact, the defendants are intending to file their written statement on record and the same be permitted to be taken on record. It will help in deciding the matter on merit. On the other hand, no prejudice will be caused to the plaintiff. Hence, they prayed to allow the application.

2. The plaintiff has resisted the application on the ground that the reason mentioned in it is not genuine. Said application has not been filed within limitation. If the Court comes to the conclusion to allow the application, heavy cost be imposed.

3. Heard both the sides. Perused the application and say along with the entire record. The present suit has been filed in the year 2016 for partition of the suit property. The plaintiff has claimed 1/5th share in the suit property as well as he claimed the relief of

perpetual injunction. The perusal of roznama dtd.20.12.2019 shows that pursis has been filed at Exh.55 by the plaintiff that he does not want to claim any relief against defendant No.7 to 18. However, there appears no *exparte* or without written statement order against the said defendants. Therefore, there is no question of its setting aside. The present suit is for partition. As per the submission of present defendants, they want to file their written statement on record. In such circumstances, considering the nature of suit, I find substance in the submission of present defendants. Moreover, no prejudice will be caused to the present plaintiff, if the present application is allowed. It is also pertinent to mention here that the defendants are having opportunity to file their written statement on record on earlier occasion but they failed to do so. Resultantly they have caused unnecessary delay. However, in view of the aforesaid discussion as the application needs to be allowed, the same can be allowed by imposing certain amount of cost. Hence, the order:

ORDER

1. The application (Exh.72) is hereby allowed subject to payment of cost of Rs. 500/- (Rupees Five Hundred Only).
2. On payment of cost as above, the written statement filed by the present defendants be taken on record.
(Dictated and Pronounced in open court.)

Date : 05.06.2023

(R.M. Bhende)
2nd Jt. Civil Judge Jr. Dn. Wai.

CERTIFICATE

“ I certify that this Order uploaded is a true and correct copy of original signed Order”.

Order dictated on : 05.06.2023

Order checked and signed on : 05.06.2023

Uploaded by : S. S. Kumbhar.
Stenographer (Grade-III)

Uploaded on : 06.06.2023