

Order below Exhibit 30

(Passed on 05th day of January 2023)

The defendant has filed an application under Order 6 Rule 16 of the Civil Procedure Code contending that the Plaintiffs have not produced their evidence since last many dates and they have not moved any application in that regard and the order sheet maintained by the court reflects the conduct of the Plaintiffs. The suit was fixed for order noticing such conduct of the Plaintiffs on 03/08/2022 but suddenly on 25/08/2022 the Plaintiff number 1 filed his affidavit in lieu of evidence at Exhibit 29 without seeking any prior permission of this court. The conduct of the Plaintiffs is nothing but an abuse of process of court and hence, the pleading made by them should be struck out and they shall not be permitted to adduce evidence. The defendant filed the written notes of arguments in support of his application at Exhibit 32.

02. The Plaintiffs filed their reply overleaf the application and opposed it on the ground that it is not maintainable in eyes of law and the Plaintiff number 1 is filed his evidence on record and the stage of the suit has changed and hence, application has become infructuous. They prayed for rejecting the application.

03. I have perused the application, say thereon and heard learned advocate for both the sides. This is a suit for partition and separate possession. The age of Plaintiff No. 2 is 80 years. This court has passed an order below exhibit one directing the Plaintiff to adduce their evidence or else suitable order as would follow or their default on 18/06/2022. The adjournment application is which were filed by the Plaintiff's at Exhibit 28 was also rejected. It was on 25/08/2022, the Plaintiff number 1 filed his affidavit in chief on record. This

application was moved by the or which is otherwise an abuse of the process of the court. These conditions are required to be fulfilled in order to strike out the pleadings of a party. The defendant is trying to bring to the notice of the court that the Plaintiff is not adducing evidence promptly and is delaying the trial and hence, he prays to strike out the pleadings of the Plaintiffs. The purport of the provision of Order 6 Rule 16 of CPC is not as is understood by the defendant and the words 'delay the fair trial of the suit' appearing in the provision are in context to the pleadings. The defendant is required to show that any part of the portion of the pleading is such that it is unnecessary or it may tend to prejudice, embarrass the fair trial and cause delay. The pleadings as such that those would cause abuse the process of court and the suit cannot be continued without striking out those pleadings. The rules of pleadings are required to be followed by the parties and any sort of deviance from it may enable the courts to exercise the power provided under Order 6 Rule 16 of CPC. There is no such material which shows that the plaint is drafted without following the rules of pleadings. The provisions of Order XVII of CPC may be applied in the contingency of default by parties to produce evidence and as expressed by the defendant in his application and the court shall definitely deal with it at proper times. Hence, I proceed to pass the following order: -

ORDER

The application at Exhibit 30 is hereby rejected. Needless to say that the parties shall expedite the hearing of the suit. Cost in cause.

Darwha

Date: 05/01/2023

M. M. Kalyankar

3rd Jt. Civil Judge Jr. Dn. , Darwha