

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO.1421 OF 2014

1. Malanbai w/o Sahebrao
Deshmukh, Age 75 years,
Occupation Household,
R/o Selu-Amba,Taluka Ambajogai,
District Beed
2. Mohini d/o Ramakant Deshmukh,
Age Minor, u/g of her grandmother
Petitioner No.1

.. Petitioners
(Orig.Plaintiffs No.1
and 2)

Versus

- Shripati s/o Harishchandra Autade,
Age 55 years, Occu. Agriculture,
R/o Selu-Amba,Taluka Ambajogai,
District Beed

.. Respondent
(Orig.Defendant
No.1)

Mr Shrikant Kulkarni, Advocate for petitioners
Mr N.L.Jadhav, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 4th March 2015

PER COURT

1. The petition is by the plaintiffs in a suit being Regular Civil Suit No.212 of 2009 for declaration and perpetual injunction, questioning the legality and validity of the order dated 22nd January 2014 passed by the Civil Judge, Senior Division, Ambajogai below Exh.75, an application by plaintiffs raising an objection to the examination of plaintiff No.2-minor as witness of defendant No.1. Learned Civil Judge,

Senior Division, Ambajogai, by the order impugned has overruled the said objection, as such the present petition.

2. Learned Counsel for the petitioners would urge that the impugned order is not sustainable in view of the fact that the same goes contrary to the mandate of Section 118 and Section 3 of the Evidence Act which provides for as to the person, who may testify and the evidence of a child to be appreciated in the legal proceedings. He would further urge that petitioner No.2 - plaintiff No.2 who is admittedly minor, is permitted to depose against herself as witness of defendant No.1, same is not permissible in law, as according to him, the said right is secured in the Constitution.

3. Learned Counsel for the petitioner further urged that for examining the child witness there is an appropriate procedure which is required to be adopted and before examining plaintiff No.2 as witness of defendant No.1, no permission of the competent Court was taken. Learned counsel would further urge that the heirship certificate obtained by respondent showing himself to be the guardian of plaintiff no. 2 is a sham and bogus document obtained by fraud and thus not binding on plaintiffs.

4. The learned Counsel for respondent-defendant No.1 would urge that from the record, it was demonstrated that the petitioner No.2 - plaintiff No.2 was neither examined as plaintiffs' witness nor the plaintiff No.1 has deposed on her behalf. He sought to rely upon the fact that petitioner No.2-the minor, whose mother was murdered by her father and who was convicted for an offence punishable under

Section 302 of the Indian Penal Code, is residing with the respondent. He would further urge that the admissibility of the evidence of such minor would be subject to strict scrutiny in the light of the provisions of the Evidence Act.

5. According to learned Counsel for the respondent, learned trial Court once having exercised its discretion in rejecting the objection raised by the petitioners, no prejudice would be caused to the petitioners herein due to grant of permission to proceed with the evidence of petitioner No.2 and as such, sought rejection of petition.

6. If the submissions are analysed in the scheme of Sections 3 and 118 of the Evidence Act, the evidence of a child witness who is allowed to testify, will be strictly analysed by the concerned Court in the light of questions put to such witness and the rational answers given thereto. The Court is also required to keep in mind that such child witness is always subjected to tutoring and it is for the Court to decide the admissibility of evidence of such child witness. It is also required to be noted that the Statute i.e. Evidence Act which deals with the evidence of child witness does not put an absolute embargo on the right of the party claiming examination of child witness, however, the same can be granted by the Court with utmost caution and the admissibility of such evidence would be subject to strong scrutiny. In view of the same, the testimony of such witness as has been observed herein above is to be accepted with utmost caution. In my opinion, in present case, once the said minor witness is not

examined by the plaintiffs, the Court below has rightly overruled the objection to that effect by the plaintiffs.

7. So far as the contention of the petitioners that if the said witness is allowed to be examined, she may depose against herself is concerned, it is to be noted, the admissibility of evidence of such witness as is observed herein above is subject to scrutiny which is required to be done with great care and caution. The degree with which the Court is required to analyse the evidence of child witness is already known in law and it is open for the Court to accept the evidence of minor in the light of competency of such witness of understanding.

8. With above observations, no case is made out for interference. The writ petition being devoid of merits, stands rejected.

(N.W. SAMBRE, J.)

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