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

WRIT PETITION NO. 3335 OF 2013

Sambhaji s/o Shivaji More,
Age: 69 years, Occu: Agri.,
R/o. Kanegaon, Tq. Lohara,
Dist. Osmanabad

..PETITIONER
(Orig.plaintiff)

VERSUS

1. Smt. Sindhubai w/o Ramrao More,
Age: 69 years, Occu: Household,
R/o Kanegaon, Tq. Lohara,
Dist. Osmanabad
2. Sow. Shashikala w/o Subhash Patil,
Age: 54 years, Occu: Household,
R/o As above
3. Gramsevak,
Grampanchayat Office Kanegaon,
Tq. Lohara, Dist. Osmanabad
4. Sarpanch,
Grampanchayat Office Kanegaon,
Tq. Lohara, Dist. Osmanabad

..RESPONDENTS
(Orig. Defendants)

Mr P. K. Deshmukh, Advocate for petitioners

CORAM : N.W. SAMBRE, J.
DATE : 9th December, 2015

ORAL ORDER :

This petition is by the original plaintiff to Regular Civil Suit No.258 of 2008, which is for declaration of ownership and permanent injunction, questioning the legality and validity of the order, rejecting the prayer for setting aside an order of “no cross-examination”, passed against the petitioner, in the matter of evidence of defendant no.2.

(2)

2. Heard learned Counsel appearing on behalf of the petitioner-plaintiff. It is the case of the petitioner that his arguments are yet to begin and the Trial Court, in haste, heard the defendants first, which is formed to be the basis for rejection of prayer for cross-examination of defendant no.2 by the petitioner-plaintiff. He would then urge that it is for the plaintiff to prove all the issues and there is no burden on the defendants and as such, the Trial Court has committed an error of hearing the defendants first in the matter and then rejecting the application for cross-examination of defendant no.2.

3. The submissions on behalf of the petitioner-plaintiff are not objected on behalf of the respondents.

4. It is required to be noted that on 7th March, 2013, the Trial Court has ordered "no cross-examination" of defendant no.2 by the plaintiff. Thereafter the plaintiff has moved an application on 30th March, 2013 for setting aside order of "no cross-examination" of defendant no.2, which application is rejected on the ground that defendants arguments are over.

5. In the background of facts stated herein above, since the burden to prove the issues and the case pleaded is on the plaintiff, the Trial Court should have heard the arguments of the plaintiff first.

(3)

6. In the above background, in my opinion, the order impugned is not sustainable. Thus, the writ petition succeeds. I, therefore, pass following order :-

The order dated 30th March, 2013, passed by Civil Judge Junior Division, Lohara, below Exh.67, in Regular Civil Suit No.258 of 2008, is quashed and set aside. The application Exh.67 stands allowed.

The plaintiff shall complete cross-examination of defendant no.2 as expeditiously as possible and in any case, within a period of two months from today, as this Court has stayed the proceedings in the suit since 18th April, 2013.

The amount of costs of Rs.3,000/-, deposited by the petitioner in this Court, be remitted to the Trial Court and defendant no.2 will be at liberty to withdraw the same.

Writ Petition stands allowed in above terms.

(N.W. SAMBRE, J.)

amj