

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5873 OF 2014

Appasaheb @ Dnyaneshwar s/o
Niranjan Gursal,
Age: 38 yrs., Occ. Agri.,
R/o Ghari, Tq. Kopargaon,
Dist. Ahmednagar

...PETITIONER

VERSUS

- 1) Sau. Meenabai w/o Appasaheb @
Dnyaneshwar Gursal,
Age: 35 yrs., Occ. Household,
R/o Sonewadi, Tq. Kopargaon,
Dist. Ahmednagar
- 2) Rutuja d/o Appasaheb Gursal,
Age: 14 yrs., Occ. Education,
R/o Sonewadi, Tq. Kopargaon,
Dist. Ahmednagar
Through her u/g Resp. No. 1
- 3) Balasaheb Bansilal Jadhav,
Age: 43 yrs. Occ. Agri.
- 4) Yamraj s/o Balasaheb Jadhav,
Age: 22 yrs., Occ. Education
- 5) Megraj s/o Balasaheb Jadhav,
Age: 18 yrs., Occ. Education
- 6) Sarika d/o Balasaheb Jadhav,
Age: 20 yrs., Occ. Education

Resp. Nos. 3 to 6 R/o Ghari,
Tq. Kopargaon, Dist. Ahmednagar
- 7) Smt. Bhanubai Jagannath Pawar,
Age: 71 yrs., Occ. Agri.,
R/o Malunje (Kh) Tq. Rahuri,
Dist. Ahmednagar

- 8) Mandabai w/o Madhukar Jadhav,
Age: 49 yrs., Occ. Household,
R/o Sonewadi, Tq. Kopargaon,
Dist. Ahmednagar

...RESPONDENTS

Mr N. D. Sonavane, Advocate for petitioners;
Mr C. R. Thorat, Advocate for respondent No. 1;
Mr K. B. Jadhav, Advocate for respondent Nos. 7 & 8

CORAM : N.W. SAMBRE, J.

DATE : 3rd March, 2015

ORAL ORDER

The order dated 11th April, 2014, passed by the Civil Judge Junior Division, Kopargaon, below Exh.81, in Regular Civil Suit No.99 of 2008, rejecting the claim of the petitioner/defendant no.1, to permit further cross-examination of the plaintiff, is impugned in the present petition.

2. Respondents no.1 & 2/original plaintiffs filed a suit for partition and separate possession of the suit property, in which after examination-in-chief was filed, defendant no.1 cross-examined plaintiff no.1. After cross-examination of plaintiff no.1, she filed an application for amendment, impleading defendants no.6 and 7 and has filed an additional affidavit (Exh.77) in the form of examination-in-chief. Pursuant thereto, application Exh.81 came to be filed by defendant no.1, seeking permission to further cross-examine the plaintiff.

3. Learned Counsel appearing on behalf of the petitioner/defendant no.1, while questioning the legality and validity of the order dated 11th April, 2014, passed by the learned Trial Court, rejecting the application Exh.81, would urge that in view of the subsequent development, it was necessary that the petitioner should have been given an opportunity of cross-examining the plaintiff. He would urge that, it is an admitted fact on record that plaintiff no.1, after amendment of the suit, has filed additional examination-in-chief and as such, even though the petitioner/defendant no.1 has completed cross-examination of plaintiff no.1 on 24th July, 2009, still the subsequent development gives him legal right to seek permission for her further cross-examination.

4. While countering the above referred submissions, learned Counsel appearing on behalf of respondent no.1, has invited my attention to the contents of the examination-in-chief (Exh.77) filed by respondent no.1/plaintiff. He would further urge that the learned Trial Court has taken note of the fact that in additional examination-in-chief filed by the plaintiff, no new factual matrix or any contents thereof detrimental to the interest of the defendants, are pleaded. According to him, the order passed by the Court below is just and proper and, therefore, prayed for rejection of the petition.

5. Having considered rival contentions of the parties, it is noticed that defendants no.6 and 7, admittedly are impleaded as parties to the suit after 24th July, 2009, i.e. the date on which the petitioner/defendant no.1 has concluded cross-examination of plaintiff no.1. Perusal of Exh.77, i.e. additional examination-in-chief furnished by the plaintiff reflects that the contents thereof are related to defendants no.6 and 7 and are in no way adverse to the interest of defendant no.1. If defendants no.6 and 7 have any objection to the contents of examination-in-chief, they can deal with the the same during the cross-examination of the plaintiff, as and when their turn comes for cross-examining the plaintiff. However, merely filing of the additional examination-in-chief, after the amendment of the plaint, in my opinion, and rightly so observed by the Trial Court, does not give rise to the cause to the present petitioner/defendant no.1, to seek further cross-examination of the plaintiff, which was closed by him on 24th July, 2009, particularly having regard to fact that no prejudice is established.

6. The above referred observations are in view of the contents of further examination-in-chief (Exh.77) submitted by the plaintiff.

7. Reliance placed by the learned Counsel appearing on behalf of the petitioner on the judgment of Madhya Pradesh High Court, in the matter of **Ram Vishal alias Vishali vs. Dwarka Prasad Jaiswal**, reported in **AIR**

2006 MP 68, so as to canvass that, if the plaint is amended subsequent to the cross-examination and additional examination-in-chief is brought on record, the defendant or the party concerned gets a right of further cross-examination, even if on earlier occasion the cross-examination of the said witness is closed, it is required to be noted that in the said case, what was sought to be placed on record were three compromise decrees which had direct bearing over the issue involved in the said proceedings, which prompted the said Court to take a view of granting further cross-examination, whereas in the facts of the present case, it is noticed that further examination-in-chief (Exh.77) filed by the plaintiff has hardly any bearing over the rights and contentions raised by defendant no.1 in his defence.

8. In that view of the matter, no case for interference is made out. Writ Petition being devoid of merit stands rejected with no order as to costs.

(N.W. SAMBRE, J.)

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