

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.251/2015

Radheshyam Trimbakraj Khandelwal.
...Petitioner..

Versus

Trimbakraj Kewalram Khandelwal,
died, and another.
...Respondents...

.....
Shri V.B. Mantri, Advocate for petitioner.

.....

CORAM: T.V. NALWADE, J.

DATE: 21.11.2015

ORDER :

1] The proceeding is filed to challenge the order made by the learned Civil Judge, Junior Division, Jamner, on Exhibit 86 in Regular Civil Suit No.162/1996. The order is made to allow the defendants to cross-examine the plaintiff again in view of the new issue framed in the suit.

2] Heard learned counsel for the petitioner.

3] It appears that while deciding Regular Civil Appeal No.250/2009, the learned Principal District Judge,

- 2 -

Jalgaon, gave direction to the trial Court to frame necessary issue in view of direction given by him in the reasoning of the judgment and for that, the matter was remanded back. The entire judgment and order of the trial Court is set aside by the first appellate Court and that means that the suit is remanded for fresh trial. Fresh trial will also be in respect of the additional issue. The appellate Court has given finding that the trial Court ought to have framed issue in respect of the decree of Regular Civil Suit No.14/1964. In view of this direction, the trial Court has framed additional issue at Exhibit 23, which is as under:-

"Does the defendant no.2 prove that the decree in RCS No.14/1964 was collusive and in fact there was no partition ?"

3] After framing of the aforesaid additional issue, it appears that the plaintiff filed Purshis that he does not desire to lead evidence. However, the defendants want to lead evidence and the defendants want to further cross-examine the plaintiff. In view of the aforesaid circumstances, this Court holds that the defendants have such right. The learned counsel for the petitioner drew

- 3 -

the attention of this Court to the provision of Section 138 of the Indian Evidence Act. He submitted that when the parties have already led the evidence and the plaintiff was cross-examined, the trial Court ought not to have allowed the defendants to recall the plaintiff for further cross-examination. This submission is not at all acceptable. Every time, the matter is remanded back for fresh trial and every time when new issue is framed, both the parties are entitled to lead evidence and they can also recall the other side witnesses for further cross-examination. Thus, there is nothing in the present proceeding on the basis of which notice can be issued to the other side.

4] For the aforesaid reasons, the civil revision application stands dismissed.

(T.V. NALAWADE, J.)