

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1773 OF 2015

Maruti Eknath Bagad & Ors. .. Petitioners
VS.
Sau. Zunkabai Kachru Gare & Anr. .. Respondents

Mr. Rahul D. Motkari for Petitioners.

CORAM : M. S. SONAK, J.
DATE: 30 MARCH 2015

P.C. :-

- 1] **Not on Board. Upon production, taken on board.**
- 2] This petition takes exception to the order dated 18 December 2014 by which the learned Civil Judge has essentially declined to recall the plaintiff or the plaintiff's witnesses so as to enable the petitioner / defendants to cross examine the same in the context of three additional documents permitted to be produced on record.
- 3] The three documents permitted to be produced on record are as follows:
 - (a) 7/12 extract (revenue record);
 - (b) a judgment and order made by the revenue authorities;
 - (c) a statement made before the revenue authorities;

4] At least the first and second document referred to herein-above are public documents. Besides in this petition, the petitioners have not challenged the order by which a production of said documents was permitted. The petitioners challenge the order made on application seeking leave to cross-examine the plaintiff or the plaintiff's witnesses in the context of the aforesaid documents.

5] In this regard, the provisions of Order 18 Rule 17 are quite clear. The provisions contemplate that the Court may at any stage of a suit recall any witnesses who have been examined and may, subject to the law of evidence for the time being in force put such questions to him as the Court thinks fit. Therefore, essentially the powers under Order 18 Rule 17 have to be exercised by the court, if the court is of the opinion that there is some ambiguity in the evidence already tendered or for such similar reason, it is necessary that the witnesses are recalled. Thereafter it is for the court to put questions to said recalled witnesses.

6] Further this is a case where the petitioners have yet to commence evidence. Accordingly, no serious prejudice will occasion to the petitioners, on account of the impugned order, which is even otherwise not vitiated by error of jurisdiction.

7] In the present case, since the court has exercised its discretion by holding that it is not necessary to recall the witnesses, particularly since the documents in question are public documents, it cannot be said that the impugned order is vitiated by any error of jurisdiction

8] Accordingly, no case is made out to interfere with the impugned order. This petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

Chandka