

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1351 OF 2013

Sambhaji Ramchandra Kamble,)
Age:-57 years, Occu:-Service,)
R/o:-Kannamwar Nagar, Bldg. No.228,)
Room No.8917, First Floor,)
Vikhroli (East), Mumbai-400 083. .. Petitioner

Versus

1. Smt. Anusaya Nivrutti Kamble (deceased))
(deleted as per order below Exh.102))
2. Vijay Nivrutti Kamble,)
Age:-53 years, Occu:-Agriculturist,)
R/o:-Jalochi, Tal:-Baramati, Dist:-Pune.)
3. Nandu Nivrutti Kamble,)
Age:-51 years, Occu:-Agriculturist,)
R/o:-Jalochi, Tal:-Baramati, Dist:-Pune.)
4. Somnath Nivrutti Kamble,)
Age:-47 years, Occu:-Service,)
R/o:-Homes Ganesh Building, 3rd Floor,)
Room No.302, Sector No.3,)
Ghansoli, Navi Mumbai-400 071.)
5. Sou. Vimal Macchindra Shinde,)
Age:-65 years, Occu:-Agri & household,)
R/o:-Shirsufal, Tal:-Baramati, Dist:-Pune.)
6. Sou. Lilavati Baban Bagade,)
Age:-60 years, Occu:-Labour,)
R/o:-Post Rahu, Tal:-Daund, Dist:-Pune.)

7. Shri. Dagadu Chokhu Kamble,)
Age:-80 years, Occu:-Retired & Agri,)
R/o:-Jalochi, Tal:-Baramati, Dist:-Pune.)
8. Ramchandra Chokhu Kamble)
since deceased through legal heirs)
- (a) Mahadev Ramchandra kamble,)
Age:-63 years, Occu:-Retired,)
R/o:-Tadiwala Road, Near Railway)
Quarters, Maruti Mandir,)
Tadiwala Road, Pune-1.)
- (b) Smt. Shantabai Laxman Gaikwad,)
Since deceased through legal heirs,)
- (b-1) Ashok Laxman Gaikwad,)
Age:-Adult, Occu:-Labour,)
R/o:-Agakhan Bungalow Compound,)
Near Siddharth Nagar, Lonavala,)
Tal:-Maval, Dist:-Pune.)
- (b-2) Shaila Ajit Mapare,)
Age:-Adult, Occ:-Household,)
R/o:-Post Pimpalgaon, Tal:-Daund,)
Dist:-Pune.)
- (c) Sou. Gangubai Tukaram Shinde,)
Age:-67 years, Occu:-Household,)
R/o:-Near Songaonkar Bungalow,)
Vasant Nagar, Baramati, Dist:-Pune.)
- (d) Sou. Tarabai Sopan Bagade,)
Age:-65 years, Occu:-Household,)
R/o:-Samata Nagar, Opp. MSEB Board,)
Daund, Tal:-Daund, Dist:-Pune.)
- (e) Sou. Sarubai Valmik Sonavane,)
Age:-60 years, Occu:-Household,)

- R/o:-Nehru Chowk, New Municipal Colony,)
Ground Floor, Room No.5, Daund,)
Dist:-Pune.)
- (f) Sou. Hirabai Jagannath Barshinge,)
Age:-55 years, Occu:-Household,)
R/o:-Babasaheb Ambedkar Nagar)
(Chowk), Near B-Cabin, Ambernath,)
Dist:-Thane.)
- (g) Sou. Kamal Appa Shinde,)
Age:-50 years, Occu:-Household,)
R/o:-Post Shirsufal, Tal:-Baramati,)
Dist:-Pune.)
9. Rajaram Chokhu Kamble,)
Since deceased through legal heirs,)
- (a) Savitribai Rajaram Kamble,)
Age:-80 years, Occu:-Household,)
R/o:-Jalochi, Tal:-Baramati, Dist:-Pune.)
- (b) Popat Rajaram Kamble,)
Age:-70 years, Occu:-Agriculturist,)
R/o:-Jalochi, Tal:-Baramati, Dist:-Pune.)
- (c) Ranjana Bhagwan Londe,)
Age:-53 years, Occu:-Household,)
R/o:-Hanuman Wadi (Mala),)
Tal:-Daund, Dist:-Pune.)
- (d) Nana Rajaram Kamble,)
Age:-52 years, Occu:-Service,)
R/o:-Manas Sarovar Building,)
Sector 9, 4th Floor, Room No.401,)
Airoli, Navi Mumbai.)
- (e) Sayaji Rajaram Kamble,)
Age:-39 years, Occu:-Agriculturist,)

- R/o:-Jalochi, Tal:-Baramati, Dist:-Pune.)
- (f) Baban Rajaram Kamble,)
- Age:-37 years, Occu:-Agriculturist,)
- R/o:-Jalochi, Tal:-Baramati, Dist:-Pune.)
10. Krishna Chokhu Kamble,)
- Since deceased through legal heirs,)
- (a) Pravin Krishna Kamble,)
- Age:-29 years, Occu:-Service,)
- (b) Smt. Rukhminibai Krishna Kamble,)
- Age:-58 years, Occu:-Household,)
- (c) Shri. Sandeep Dyandeo Bhosale,)
- Age:-23 years, Occu:-Student,)
- R/o:- Vakratund Housing Society,)
- 2nd Floor, 202, Plot No.1, Sector No.5,)
- Ghansoli, Navi Mumbai-400 701.)
11. Phulabai Maruti Shinde,)
- Since deceased through legal heirs,)
- (a) Pralhad Maruti Shinde,)
- Age:-Adult, Occu:-Agriculturist,)
- R/o:-Daund, Ekta Nagar,)
- Near Railway Quarters, Dist:-Pune.)
- (b) Sou. Shesabai Eknath Chitare,)
- Age:-49 years, Occu:-Agriculturist,)
- R/o:-Ambegaon, Tal:-Daund, Dist:-Pune.)
- (c) Sou. Sakhubai Balasaheb More,)
- Age:-44 years, Occu:-Labourer,)
- R/o:-Amrai, Ambedkar Nagar Vasahat,)
- Tal:-Baramati, Dist:-Pune.)
12. Rakhmabai Chandarrao Bhosale,)
- Age:-79 years, Occu:-Agriculturist,)
- R/o:-Bhimnagar Housing Society,)

Near Samaj Mandir, Amrai Baramati,	)
Tal:-Baramati, Dist:-Pune.	)
13. Rahibai Hiraji Bhosale,	)
Age:-75 years, Occu:-Agriculturist,	)
R/o:-Nira Wagaj, Tal:-Baramati,	)
Dist:-Pune.	)
14. Shankar Nivrutti Kamble,	)
Age:-57 years, Occu:-Service,	)
R/o:-Worli, Police Camp 19/191,	)
Mumbai-400 025.	.. Respondents

Mr. Shriram S. Kulkarni, for the Petitioner.

Shri. Wasim Ansari, for Respondents No.2 to 7 & 9(a) to 9(f) & 14.

None appears for other Respondents, though served.

CORAM : R.M. SAVANT, J.

DATE : 12th FEBRUARY, 2015

ORAL JUDGMENT

1. At the outset the Learned Counsel for the Petitioner Shri. S. S. Kulkarni seeks deletion of the Respondents No.11(a) and 11(b) as in the context of the challenged raised in the above Petition, they are only formal parties. The hearing of the above Petition was deferred on 4th February, 2015 as service on the Respondent No.7 was not complete. The Learned Counsel appearing for the Respondents No.1 to 6, Mr. Wasim Ansari has now filed Vakalatnama even for the Respondent No.7. Hence, the Respondents No.1 to 7 who are the original Plaintiffs and who are the main contesting Respondents have all been served. The Petition therefore can be proceeded with.

2. Rule, with the consent of the Learned Counsel for the parties made returnable forthwith and heard.

3. The above Petition filed under Article 227 of the Constitution of India takes exception to two orders i.e. order dated 07.09.2012 passed on Exh.150 and the order dated 21.01.2013 passed on Exh.156. By the said order, the application Exh.150 filed by the Petitioner/original Defendant No.1(b) to amend his written statement came to be rejected. By the second order, the application Exh.156 for being permitted to cross-examine the Plaintiff's witness came to be rejected. It is not necessary to burden this order with unnecessary details. Suffice it to state that in so far as application Exh.156 is concerned, the same has been rejected on the ground that the amendment sought so as to make addition in the written statement is part of the evidence and is also contrary to the pleading of the Defendant No.1 in the written statement as originally filed. Having regard to the said reason mentioned in the impugned order for rejection of the said application Exh.156, in my view, no exception could be taken to the impugned order as obviously evidence is not required to be pleaded and it is also well settled that no evidence contrary to the pleadings can be allowed to be led. Hence, in so far as order dated 07.09.2012 passed on Exh.150 is concerned, no interference in the Writ Jurisdiction of this Court is called for. In so far as the order dated 21.01.2013 passed on Exh.156 is

concerned, it seems that the Trial Court denied the opportunity to the Defendant No.1(b) to cross-examine Plaintiff's witness on the ground that no written statement was filed by the Defendant No.1(b). It is required to be noted that in the application Exh.150 the Defendant No.1(b) has in terms averred that he is adopting the written statement filed by his father Exh.26. Hence, the Trial Court whilst refusing the Defendant No.1(b) to cross-examine the Plaintiff's witness has proceeded on a wrong premise. The Learned Counsel appearing for the original Plaintiffs i.e. Respondents No.1 to 7 herein fairly concedes to the position that the Defendant no.1(b) would be entitled to cross-examine the Plaintiff's witnesses on the basis of the written statement filed by his father Exh.26. The Learned Counsel further states that he has no objection to the said course of action being followed. In view of the said statement made by the Learned Counsel, the second impugned order dated 21.01.2013 passed on Exh.156 is required to be quashed and set aside and is accordingly, quashed and set aside. The application Exh.156 would accordingly stand allowed. The Defendant No.1(b) would be entitled to cross-examine the Plaintiff's witnesses. The Petition is allowed to the aforesaid extent. Rule is accordingly made partly absolute with parties to bear their respective costs.

[R.M. SAVANT, J]