

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St.NO.22848 OF 2015**

Pandurang Balu Shingan	)	
Age --- yrs Occup: Agriculture	)	
R/o Agashivnagar, Tal Karad	)	
Dist Satara	)	..Petitioner

Vs.

1 Vishnu Balu Shingan	)	
Age 65 yrs, Occup Agriculture	)	
2 Vitthal Balu Shingan	)	
Age ___ yrs Occup Agriculture	)	
Respondent Nos.1 and 2 both	)	
R/o Agashivnagar, Tal Karad	)	
Dist Satara	)	..Respondents

Mr. Kalpesh Patil for the Petitioner
Mr. Pratap Patil for the Respondent No.1

CORAM : R. M. SAVANT, J.
DATE : 29th SEPTEMBER, 2015

ORAL JUDGMENT

1 Rule. With the consent of the Learned Counsel for the parties made returnable forthwith.

2 The Writ Jurisdiction of this Court is invoked against the order dated 29-7-2015 passed by the Learned Civil Judge Junior Division, Karad, by which order, the application Exhibit 137 filed by the Defendant No.2 for being

permitted to cross examine the Plaintiff's witness has been rejected.

3 The said rejection is on the ground that the appearance of the Defendant No.2 is not on record. The Trial Court has therefore observed that there would be no use permitting the Defendant No.2 to cross examine the Plaintiff's witness even on the law point.

4 The Learned Counsel appearing on behalf of the Petitioner Mr. Patil submits that the vakalatnama on behalf of the Defendant No.2 has been filed on 16-7-2012, which fact is also mentioned in an earlier application being Exhibit 92. Since the Trial Court has accepted the position that even the Defendant who has not filed his Written Statement is entitled to cross examine the Plaintiff's witness on the law point.

5 In my view, the Trial Court has erred in rejecting the application solely on the ground that the Defendant No.2 has not filed his appearance which ground seems to be factually incorrect. In my view, therefore, the impugned order dated 29-7-2015 is required to be quashed and set aside and is accordingly quashed and set aside. The application Exhibit 137 would resultantly stand allowed. The Defendant No.2 would be entitled to cross examine the Plaintiff and his witness on law points.

6 The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]

CERTIFICATE

Certified to be true and correct copy of the original signed judgment