

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9640 OF 2014**

Rajendra Radhakrishan Jaju & Anr.

..Petitioners

Vs.

Jawaharlal Bhimjibhai Chauhan & Ors.

..Respondents

Mr. Venkatesh Shashtri for the Petitioners

Mr. S. N. Chandrachud for the Respondent Nos.1 to 3

CORAM : R. M. SAVANT, J.

DATE : 14th JANUARY, 2015

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 5-9-2014, passed by the Learned Civil Judge Junior Division, Pune, by which order, the application Exhibit 142 filed by the Plaintiffs to adduce evidence of the Plaintiff No.3, came to be allowed and the Plaintiff No.3 is resultantly allowed to adduce evidence in the Suit. It appears that the Plaintiff No.2 had filed the affidavit of evidence also on behalf of the Plaintiff Nos.1 and 3 in the Suit and the Plaintiff No.2 has been exhaustively cross examined by the Defendants i.e. the Petitioners herein. It is thereafter that an application being Exhibit 123 came to be filed for leading evidence of the Plaintiff No.3. The Trial Court found that the said application for examination in chief filed on behalf of the Plaintiff No.3 was in the same terms as the affidavit of evidence of

the Plaintiff No.2 which he had filed on behalf of the other Plaintiffs and accordingly directed that the said affidavit of examination in chief Exhibit 124 be discarded.

2 It is thereafter that the instant application Exhibit 142 came to be filed with a fresh affidavit of examination of the Plaintiff No.3. The evidence of the Plaintiff No.3 is sought to be adduced on the ground that he is a witness to the alleged act of forcible entry in respect of the suit premises. The Trial Court noted the objection on behalf of the Defendants as regards the Plaintiff No.2 already having deposed on behalf of the Plaintiff Nos.1 and 3. However, having regard to the fact that the Plaintiffs want to examine the Plaintiff No.3 who is according to them is a witness to the said incident of forcible dispossession that the Trial Court allowed the said application Exhibit 142 and permitted the Plaintiffs to adduce the evidence of the Plaintiff No.3 as a witness.

3 The Learned Counsel appearing on behalf of the Petitioners concedes that the reasoning of the Trial Court in the impugned order for allowing the said application cannot be found fault with. However the Learned Counsel reiterates that the present fresh affidavit of examination in chief Exhibit 142 is also a replica of affidavit of examination in chief Exhibit 123.

4 In my view, it is not necessary for this Court to enter into the said

arena, lest the parties are caused prejudice in the trial. It would therefore be open for the Defendants to adopt a line of cross-examination keeping in mind the fresh affidavit of examination in chief which has been filed by the Plaintiff No.3.

5 With the aforesaid observations, the Writ Petition is dismissed.

[R.M.SAVANT, J]