

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.

WRIT PETITION NO.5952 OF 2014

(Shri Ramesh s/o Tukaram Badwaik ..vs.. Smt. Indira w/o Nitin Gugghuskar and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATED : 27-03-2015

Heard Shri P.S. Sadavarte, the learned Advocate for the petitioner and Shri S.P. Kshirsagar, the learned Advocate for the respondent No.1.

2. The petition is filed by the original defendant No.1 challenging the order passed by the trial Court rejecting his objection and permitting the respondent No.1/plaintiff to give evidence for proving the documents.

3. The respondent No.1/plaintiff has filed civil suit praying for partition and separate possession of the ancestral properties. The petitioner/defendant No.1 is the brother of the respondent No.1/plaintiff. The other parties are also related. The respondent No.1/plaintiff filed an application dated 09-08-2011 giving up her claim in the agricultural lands shown in the schedule of the plaint. The learned trial Judge, by the order dated 18-10-2011, had allowed the above mentioned

application filed by the respondent No.1/plaintiff permitting to abandon her claim as per Order XXIII of the Civil Procedure Code.

4. The trial proceeded and at the time of recording of examination-in-chief of the respondent No.1/plaintiff when she wanted to prove certain documents filed on the record which are in respect of agricultural lands, an objection was raised by the petitioner/defendant No.1. The petitioner/defendant No.1 submitted that as the respondent No.1/plaintiff has given up her claim in agricultural lands, it has to be treated that her pleadings in that regard are wiped from the record and consequently, she cannot lead any evidence to prove any documents relating to the agricultural lands. The learned trial Judge, by the impugned order, has recorded that the giving up of the claim by the respondent No.1/plaintiff in respect of the agricultural lands will not be affected if the respondent No.1/plaintiff is permitted to lead evidence to prove the documents relating to the agricultural lands. The petitioner being aggrieved by this order has filed the present writ petition.

5. Shri P.S. Sadavarte, the learned Advocate for the petitioner/defendant No.1 has submitted that once the respondent No.1/plaintiff has given up the claim in respect of agricultural lands, it has to be treated that the pleadings in the plaint in respect of agricultural lands are

not on the record and it being so, the respondent No.1/plaintiff cannot be permitted to lead any evidence when there is no foundation in the pleadings.

6. The impugned order is purely interlocutory order. It cannot be said that the impugned order suffers from any patent illegality or irregularity. It cannot be said that the learned trial Judge has transgressed his jurisdiction. The submissions made on behalf of the petitioner that the respondent No.1/plaintiff having abandoned her claim in respect of the agricultural lands cannot be permitted to lead evidence to prove the documents relating to the agricultural lands, cannot be considered. It cannot be said that the pleadings are wiped out. The learned trial Judge has rightly recorded that the abandonment of the claim of the respondent No.1/plaintiff will not be affected, if the respondent permitted to lead the evidence as desired.

7. In view of the above, I see no reason to interfere with the impugned order.

8. The writ petition is dismissed. In the circumstances, the parties to bear their own costs.

JUDGE