

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

56 WRIT PETITION NO. 8267 OF 2015

BHATU KARSAN CHAUDHARY
VERSUS
VITTHAL JADHAV PATIL AND OTHERS

...
Advocate for Petitioner : Deshpande C.R.
Advocate for Respondents 1A to 1D : R.S. Wani
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CORAM : T.V. NALAWADE, J.
DATED : 26th September, 2016.

ORDER :

1. The petition is filed by defendant of Regular Civil Suit No. 96/2009 against the order made on Exh. 43. The suit is filed for declaration and possession and relief is claimed in respect of one document titled as sale deed. Affidavit of examination in chief was filed by plaintiffs, but the cross examination is not commenced. Plaintiff was interested to bring the original sale deed on record and so, application was moved for giving direction to the defendant. In view of the direction given by the Trial Court, the original sale deed is produced by the defendant on record. As the execution of the sale deed is not disputed by the plaintiff, he had requested for giving exhibit to the said document. But the Trial Court did not give exhibit to the document. In view of these circumstances, the plaintiff filed application at Exh. 42 and requested for permission to file

additional affidavit as evidence of examination in chief as he wanted to refer the sale deed in the evidence. It can be said that the entire exercise was unwarranted as plaintiff himself was admitting the execution of the document. Drawing inference on the contents of the document in respect of nature of transaction is different thing. But, unfortunately, the Trial Court refused to give exhibit to the document. The Trial Court has however allowed the plaintiff to file additional affidavit as evidence in chief. This order is under challenge.

2. The learned counsel for petitioner, original defendant submitted that there is no provision in law of filing such additional affidavit as examination in chief. On this point, the learned counsel for plaintiffs, present respondents placed reliance on the case reported as **(2011) 11 SCC 275 [K.K. Velusamy Vs. N. Palanisamy]**. The Apex Court has discussed the provisions of order 18 of C.P.C. and section 151 of C.P.C. Further, the relief of recalling the witness which can be considered by the Court is specifically considered. The submissions made by the learned counsel for petitioner that additional affidavit as examination in chief cannot be filed is not at all acceptable. If a witness can be recalled for giving more evidence in chief, the filing of such additional affidavit is also

permissible. Such affidavit becomes part of original affidavit filed under Order 18 Rule 4 of C.P.C. Only due to aforesaid circumstances, the present situation has arisen. This Court holds that there is no possibility of interference in the order made by the learned Trial Court. In the result, petition stands dismissed.

[T.V. NALAWADE, J.]

ssc/