

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5933 OF 2015

VIKAS SHIVAJI PAWAR AND OTHERS
VERSUS
BALASAHEB TUKARAM UNDRE DESHMUKH AND OTHERS

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Advocate for Petitioners : Mr. D.A. Modak h/f Mr. S.Y. Mahajan

Advocate for Respondents : Mr. K.S. Doke with Mrs. S.K. Doke

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CORAM : V. K. JADHAV, J.
DATED : 23rd FEBRUARY, 2016

PER COURT:-

1. By consent, heard finally at admission stage.
2. Respondent No.1 instituted a suit bearing R.C.S. No. 288 of 2012 for partition and separate possession in respect of landed properties. The petitioners are original defendant Nos. 4 to 6. The respondent-plaintiff has filed his affidavit of evidence on 18.11.2013. Thereafter, the matter was adjourned for cross examination on behalf of other side. However, no cross order against the petitioners-defendants came to be passed on 23.2.2015. Consequently, the petitioners-original defendants 4 to 6 filed an application Exh.80 seeking permission to cross examine the respondent-plaintiff. However, the learned Judge of the trial court by impugned order dated 23.3.2015 rejected the said application.

3. Learned counsel for the petitioners submits that the respondent-plaintiff was required to be cross examined by original defendant Nos. 1 and 3 and thereafter he was required to be cross examined by the present petitioners, who are original defendant Nos. 4 to 6. However, on the date fixed for cross examination, the counsel representing the petitioners-original defendant Nos. 4 to 6 remained absent and therefore, the order of no cross came to be passed against the petitioners-defendants. Learned counsel submits that the said order of no cross is required to be set aside for the just decision in the suit.

4. Learned counsel for the respondent-plaintiff submits that even though the affidavit of evidence filed in the year 2013, for one or the other reason cross examination of respondent-plaintiff could not be completed. Learned counsel submits that the suit is of the year 2012. Learned counsel submits that against defendant Nos. 1 and 3 similar order of no cross came to be passed by the trial court and the same was set aside by this Court by imposing cost of Rs.10,000/-. Learned counsel in the alternative submits that, application Exh.80 may be allowed by imposing costs of Rs.15,000/-.

5. In the light of above, no cross order passed against the present petitioners-defendant Nos. 4 to 6 is required to be set aside.

However, the petitioners have not given any reasons in the application Exh.80 and therefore, certain costs is required to be imposed. In the similar circumstances, this Court has imposed costs of Rs.10,000/- on the original defendant Nos. 1 and 3 for setting aside the no cross order against them. Considering the same, following order is passed to meet the ends of justice.

O R D E R

- I. Writ petition is hereby allowed.
- II. The order dated 23.3.2015 passed by the learned C.J.J.D. Washi, below Exh.80 in R.C.S. No. 288 of 2012 is hereby quashed and set aside subject to condition that the petitioners-original defendant Nos. 4 to 6 shall pay an amount of Rs.10,000/- towards costs, to the respondent-plaintiff, within three weeks from today.
- III. Writ petition is disposed of in the above terms.

(V. K. JADHAV, J.)