

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7714 OF 2015

Dilip Nana Diwate and others .. Petitioners

Versus

Manikbai Jagannath Shelke (Since
Deceased) Through L. Rs.

Vidya Shantaram Kale and others .. Respondents

Shri Shivaji T. Shelke, Advocate for Petitioners.

Shri R. R. Karpe, Advocate for Respondent Nos. 1A & B to 5

CORAM : S. V. GANGAPURWALA, J.

DATE : 22ND MARCH, 2016.

PER COURT :

. Mr. Shelke, the learned counsel for petitioners submits that, the respondents/plaintiffs have filed simplicitor suit for injunction. In the said suit the plaintiffs filed their examination in chief by way of affidavit. Thereafter the plaintiffs' witnesses were cross examined at length and after closure of cross examination the plaintiffs did not reexamine the witness. Thereafter filed an application for leading evidence as a witness to the will deed. The learned counsel submits that, the Trial Court did not allow the plaintiffs to lead evidence as a witness, however permitted the plaintiffs to file additional evidence but treated the examination in chief filed by plaintiffs subsequently as an additional evidence. According to the learned counsel the same is impermissible. Order 18 Rule 17-A of the Code of Civil Procedure has been deleted. The

Court could not have permitted the plaintiffs to again file examination in chief when the plaintiffs had specifically stated that they do not want to reexamine on any issue. The will deed was already part of record. Even in examination in chief the will deed is referred. The learned counsel submits that, the Trial Court had committed procedural illegality.

2. Mr. Karpe, the learned counsel for the respondents/plaintiffs supports the order.

3. No doubt the plaintiffs could not have examined the plaintiff No. 1 as a witness after examining herself as plaintiff. However, the Court conscious of the said fact allowed the same as an additional examination in chief. The Trial Court has considered that in the affidavit filed there are contentions in respect of the will executed by the plaintiffs' mother. The evidence tried to be tendered is relevant. The Court considering the said fact had allowed to tender their additional evidence. In fact it is an additional examination in chief wherein the present petitioners/defendants will have every right to cross examine the plaintiff.

4. In light of the above the writ petition is disposed of. No costs.

[S. V. GANGAPURWALA, J.]