

Mr. R. A. Thorat, Senior Advocate i/b. Mr. Pramesh Vakil for Petitioners.
Mr. P.S. Dani, Senior Advocate i/b. Mr. Suraj Shah for Respondents No.1 & 2.

CORAM : R. G. KETKAR, J.
DATE : OCTOBER 18, 2016

Heard Mr. Thorat, learned Senior Counsel for petitioners and Mr. Dani, learned Senior Counsel for respondents No.1 and 2 at length. Rule. Mr. Thorat seeks leave to delete respondents No.3 and 4 on the ground that respondents No.1 and 2 being the original plaintiffs are the only contesting respondents. On the oral application made by Mr. Thorat, leave to amend is granted. Amendment shall be carried out forthwith. Rule. M/s. DSK Legal waives service for respondents No.1 and 2. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, petitioners, hereinafter referred to as 'defendants No.1 and 2', have challenged the judgment and order dated 21.09.2015 passed by the learned trial Judge presiding over Court Room No.11 of the Court of Small Causes, Mumbai, below exhibit-75 in R.A.E.&R. Suit No.3258 of 1984. By that order, the learned trial Judge allowed the application made by the plaintiffs seeking permission to produce secondary evidence.

3. After arguing the Petition for quite some time, Mr. Dani, upon taking instructions from DSK Legal, instructing Attorneys, states that plaintiffs will withdraw application exhibit-75. He states that plaintiffs may be given liberty to take out appropriate application. He states that plaintiffs will file application on or before 25.10.2016 and will serve copy in advance on defendants. He further submitted that having regard to the fact that P.W.1 Shyam Roopchand Jaisingh is more than 75 years old, the learned trial Judge may be directed to dispose of the application in a time bound manner.

4. Mr. Thorat submitted that in the event of granting liberty to the plaintiffs, all the contentions of defendants No.1 and 2 may be kept open.

5. In view thereof, on the motion made by Mr. Dani, plaintiffs are permitted to withdraw the application exhibit-75 with liberty to take out appropriate application. All contentions of defendants No.1 and 2 are expressly kept open. The impugned order stands dissolved accordingly. Plaintiffs are at liberty to file application on or before 25.10.2016 and shall serve copy in advance on defendants. The learned trial Judge is requested to decide the application as expeditiously as possible and in any case, within 8 weeks from the date of filing of the application. All contentions of the parties on merits are expressly kept open. Rule is made absolute in the aforesaid terms with no orders as to costs.

(R. G. KETKAR, J.)