JPP

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 697 OF 2016

Sandipan Shripati Virkar,
Since deceased through his heirs &
Legal representatives,
Smt. Malabai Sandipan Virkar & Ors. … Petitioners.

V/s.

Mr. Ambadas Daji Galande & Ors. ... Respondents.

Mr. Dilip Bodake for the Petitioners.
None for the Respondents.

CORAM : N.M. Jamdar, J.

22 August, 2016.

Oral Order :-

Not on board. Taken on production board by way of praecipe.

2. The Petitioners challenge the order passed by the learned Civil Judge dated 9 January 2014 allowing the Application filed by the Respondents – Plaintiffs for examining himself and appointing Court Commissioner. The learned Counsel for the Petitioners submitted that having examined a Power of Attorney, further

examination without cancellation of earlier evidence is not permitted. The learned Civil Judge has exercised its discretion in permitting the Plaintiff to depose as he has found that the Plaintiff was suffering from paralysis and the Plaintiff wanted to depose in respect of the facts which were in his personal knowledge. All that is done is, giving an opportunity to the Plaintiff to lead evidence. The Plaintiff has not been cross-examined. In any case, if the Plaintiff is seeking to lead any evidence contrary to the evidence of his Power of Attorney or for trying to fill up the lacunae as contended, it is open to the Petitioners to urge this point at the time of hearing of the Suit and also in Appeal in view of Section 105 of the Code of Civil Procedure. In view of this position, it is not necessary to interfere in the impugned order. The Writ Petition is rejected.

(N.M. Jamdar, J.)