

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No. 347 of 2016

Ganpat Laxman Parate

vs.

Sevakram s/o Daulatrao Kolhe

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*Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.*

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Court's or Judge's Orders

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Mr. S.K. Chaware Advocate for the petitioner.

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CORAM : S. B. SHUKRE, J.

DATE : MAY 04, 2016.

Heard learned counsel for the petitioner. He submits that the petitioner is an illiterate person not knowing law. He submits that he blindly relied upon his advocate defending him in the trial Court. He submits that the Advocate who represented the petitioner before the trial Court ought not to have filed the pursis of giving up witness like Hemraj, who was the most important witness from the view point of proving the defence of the petitioner that he is the lawful owner of the suit property as the suit property was purchased by him from Hemraj, who is the legal heir of deceased Krushnarao and other legal heir.

The first appellate Court, on perusal of the impugned order, has come to the conclusion that the reason stated in the application was not within the frame work of

provision of Order 41 Rule 27 of Code of Civil Procedure. He relies upon clause (AA) of sub-rule (1) of Rule 37 Order 47 of Code of Civil Procedure and submits that the first appellate Court has found that the case of diligence has not been proved by the petitioner in this case and, therefore, by virtue of said provision the application cannot be granted. The first appellate Court has also found that because of non-examination of the material witness Hemraj, the trial Court drew adverse inference against the petitioner. The reasons given in the impugned order are entirely consistent with the provisions of law. Now, that another advocate has been engaged by the petitioner, who has given some other opinion, would not entitle the petitioner to take the clock in reverse direction. Much water has flown after the order of the trial Court and now that adverse inference having been drawn, the petitioner cannot be allowed to take the case in the reverse direction. If the petitioner is allowed to do so, it would affect the rights accrued and settled in favour of the other side. It would cause serious prejudice by unsettling these rights. In any case, jurisdiction of this Court under Article 227 of Constitution of India, being supervisory in nature, is confined to only examining the correctness or illegality or arbitrariness or otherwise of the impugned order. In this case, as I have already found that the impugned order has been passed in a manner which is consistent with the settled provisions of law and so no interference in the same is warranted.

At this stage, when the order is about to be concluded, the learned counsel for the petitioner intervened and invited my attention to the case of **Laxman s/o Bajirao Kondekar vs. Kamal w/o Shyamrao Waghmare** reported in **2010(6) Mh.L.J. 813** wherein this Court has held that while deciding rights of the parties the Court must follow the rule of best evidence. There is no dispute about the principle of law enunciated in the cited case, but in that case this Court found that there was no reason as to why permission for producing additional evidence could have been refused. This case is not on the point that the reasons given in the impugned order are against law, but is on the issue if this Court could exercise its discretion to correct the mistake of the party or not, which issue has been answered by me negatively holding that now it is too late in the day. Therefore, I am of the view that the case of Laxman, *supra*, has no application to the facts of the present case. The writ petition stands dismissed. No costs.

JUDGE

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