

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

WRIT PETITION NO. 3078 OF 2017

SHRI SANJEEV PRAKASH LANGARE AND OTHERS
VERSUS
SMT SUNDARABAI JAGGANATH LANGARE AND
OTHERS

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Advocate for Petitioners : Mr. Kulkarni Mukul S.
Advocate for Respondents 1-3 : Mr. A A Puranik h/f
Mr A S Deshpande

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CORAM : V.K. JADHAV, J.

Dated: November 14, 2017

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PER COURT :-

1. Being aggrieved by the order passed below
Exh.19 dated 6.12.2016 by the 6th Jt. Civil Judge
J.D., Jalgaon in Regular Civil Suit No.327/2013, the
original defendants approached to this Court by
filing present writ petition.

2. The respondent/plaintiff has instituted
aforesaid suit for cancellation of the sale deed and
for decree of possession. Though,
respondent/plaintiff has filed his affidavit of

aaa/-

evidence, inadvertently, has failed to refer the documents submitted alongwith the plaint vide list of documents exh.15 and, therefore, constrained to file an application exh.19 for permission to file additional evidence by way of supplementary affidavit. Learned Judge of the trial court by the aforesaid impugned order allowed said application. Hence, this writ petition.

3. Learned counsel for the petitioners submits that, the main purpose of the provisions of Order 18 Rule 17 of Civil Procedure Code is to enable the court while trying a suit to clarify any doubts which it may have with regard to the evidence led by the parties. Said provisions are not intended to be used to fill up the omissions in the evidence of the witness who has already been examined. Learned counsel submits that, respondent-plaintiff has failed to refer those documents in his affidavit of evidence

and as such, said omission cannot be cured with the aid of provisions of Order 18 Rule 17 of Civil Procedure Code.

4. Learned counsel for the petitioner, in order to substantiate his submissions placed reliance on a judgment in case of **Vadiraj Nagappa Vernekar (deceased by L.Rs.) Vs. Sharad Chand Prabhakar Gogate**, reported in **AIR 2009 SUPREME COURT 1604**.

5. Learned counsel for respondent/plaintiff submits that, respondent/plaintiff has filed his affidavit-of-evidence before the Court, however, inadvertently, failed to refer the documents already filed alongwith the plaint vide list exh.15 and, as such, filed the application Exh.19 seeking permission to file a supplementary affidavit of evidence with regard to those documents. Learned

counsel submits that, though, respondent-plaintiff has filed his affidavit-of-evidence before the Court, he was not cross-examined by the petitioner-defendant and before cross-examination begun, respondent-plaintiff has filed the aforesaid application Exh.19 seeking permission to file supplementary affidavit referring those documents filed alongwith the plaint. Learned counsel submits that, there was no attempt at all on the part of the respondent/plaintiff to fill up any lacuna, since respondent-plaintiff was yet to be cross examined by the petitioner-defendant. This is a fit case to exercise the powers as contemplated under Order 18 Rule 17 of Civil Procedure Code and, the learned Judge of the Trial Court has rightly allowed application Exh.19. No interference is required. There is no substance in the writ petition.

6. On careful perusal of the contents of the

application exh.19, it appears that, respondent/plaintiff has sought permission to file supplementary affidavit-of-evidence on the ground that, even though, suit documents came to be submitted with the plaint vide list of documents Exh.15, inadvertently, those documents were not referred in the first affidavit of evidence. It has been brought to the notice of the Court that those documents are required to be exhibited. Since, those documents are not referred in the affidavit-of-evidence, documents were not exhibited. It also appears that, respondent-plaintiff though filed his affidavit-of-evidence before the Court, after verification, counsel representing the respondent-plaintiff sought adjournment from the Court on the count that an application Exh.19 has been filed seeking permission to file the supplementary affidavit-of-evidence by referring the suit documents already produced before the Court. In view of the

same, the learned Judge of the Trial Court has rightly observed that both the parties should get an opportunity to put up their case and no prejudice is likely to be caused to the petitioner-defendant in any manner. Petitioner-defendant would have a full opportunity to cross-examine the plaintiff on the facts brought on supplementary affidavit.

7. In a case Vadiraj Naggappa Vernekar (Deceased by L.Rs.) Vs. Sharad Chand Prabhakar Gogate, (supra) relied upon by the learned counsel for the petitioner, the Supreme Court in paragraph No.16 of the judgment has made following observations :-

“16. In our view, though the provisions of Order 18 Rule 17 CPC have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the said rule is to enable the Court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined. As indicated by the learned Single

Judge, the evidence now being sought to be introduced by recalling the witness in question, was available at the time when the affidavit of evidence of the witness was prepared and affirmed. It is not as if certain new facts have been discovered subsequently which were not within the knowledge of the applicant when the affidavit evidence was prepared. In the instant case, Sadanand Shet was shown to have been actively involved in the acquisition of the flat in question and, therefore, had knowledge of all the transactions involving such acquisition. It is obvious that only after cross- examination of the witness that certain lapses in his evidence came to be noticed which impelled the appellant to file the application under Order 18 Rule 17 CPC. Such a course of action which arises out of the fact situation in this case, does not make out a case for recall of a witness after his examination has been completed. The power under the provisions of Order 18 Rule 17 CPC is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and re-examination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18 Rule 17 CPC.”

8. I do not think that, respondent-plaintiff was intending to fill up omissions in the evidence. Suit

documents produced alongwith the plaint inadvertently not referred in the first affidavit-of-evidence and as such, respondent-plaintiff has filed aforesaid application Exh.19 for permission to file supplementary affidavit-of-evidence by referring those documents. Though, provisions of Order 18 Rule 17 of Civil Procedure Code are required to be sparingly exercised, in the given set of facts, in my considered opinion, this is a fit case to exercise those powers and the learned judge of the trial Court has, rightly allowed the application Exh.19. No interference is required. I do not find any substance in this Writ Petition. Writ petition is hereby dismissed. No costs.

(V.K. JADHAV, J.)

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