

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

WRIT PETITION NO. 4054 OF 2014

1. Sou. Sumanbai w/o Patloba Munde
age 47 years, occ. agriculture
and household
r/o Mandva, Tq. Parli-Vaijanath
Dist. Beed.
2. Dhanraj s/o Patloba Munde
age 28 years, occ. agriculture
and Legal Practitioner
r/o Mandva, Tq. Parli-Vaijanath
Dist. Beed
At present c/o A.B. Kale
New Ganeshnagar
Behind Gokul Sweet Mart
CIDCO, Aurangabad.

.. PETITIONERS

VERSUS

1. Sudarshan s/o Suryabhan Wange
age 27 years, occ. agriculture
 2. Suryabhan s/o Lingram Wange
age 55 years, occ. agriculture
- Both r/o Sirshi (BK), TQ. Sonpeth
Dist. Parbhani.

.. RESPONDENTS

Mr. V.D. Salunke, advocate for petitioners.
Mr. M.A. Kale, advocate for respondent no. 1.

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**CORAM : S. B. SHUKRE, J.
DATE : 16th JANUARY, 2017.**

ORAL JUDGMENT :

1. Heard.
2. Rule. Rule made returnable forthwith. Heard finally by consent.

3. The order which has been challenged in this petition is of 15th February, 2014, passed by the learned Civil Judge, Junior Division, Sonpeth. It is seen from the order that to an extent it is self-contradictory. While it partly allows the application of the petitioners who are original defendants 1 and 2, vide exh. 79, it states that this very application has been rejected with cost of Rs.2,000/-. Infact, a direction has been issued by the learned Civil Judge that crime be registered against plaintiffs' witness Shrimant Raghunathrao Tambulge at police station Sonpeth. With these directions, it is obvious that application vide Exh.79, as rightly submitted by learned counsel for petitioners, has been partly allowed. If such is the case, I do not think that imposition of any cost upon the petitioners would be just and proper. The order imposing cost upon petitioners, therefore, would have to be quashed and set aside.

4. The impugned order further shows that at this stage itself, the learned Civil Judge has entered into the arena of appreciation of evidence. This could be seen from the portion of the order to the effect that affidavit vide Exh. 69 has been rejected by the learned Civil Judge. This is not the stage when, the Civil Court should start appreciation of evidence. In the instant case, there are apparently contradictory affidavits filed by one and the same witness and therefore, the effect of both such affidavits filed in evidence by plaintiffs' witness would have to be taken at a stage which is right for appreciation of evidence and, that stage is the stage of final disposal of the suit. This portion of the impugned order, therefore, would also have to be quashed and set aside.

5. It is also the contention of learned counsel for the petitioners that the learned Civil Judge ought to have directed taking of criminal action against the original plaintiffs as well. I do not think that any case in this regard has been made out by the petitioners. The reason being that there is no material available on record to show even by law of probability that plaintiffs may have been the persons behind filing of such affidavits by deponent Shrimant Ranghunathrao Tambulge. His contention is therefore rejected.

6. In the result, this petition deserves to be partly allowed and it is allowed accordingly. The impugned order to the extent of imposition of cost of Rs. 2,000/- upon the petitioners i.e. original defendants 1 and 2 is hereby quashed and set aside. The impugned order to the extent that it rejects the affidavit vide Exh. 69 is also quashed and set aside and, it is directed that the effect of evidence as per affidavit Exh. 52 as well as affidavit Exh. 69 tendered by plaintiffs' witness Shrimant Raghunathrao Tambulge would be considered in accordance with law by the learned Civil Judge at the time of final disposal of the suit. The parties to bear their own costs. Rule is made absolute in the above terms.

(S. B. SHUKRE)
JUDGE

dyb