

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7018 OF 2015

1. Vilas s/o Rangnath Warpe,
Age-44 years, Occ. Agril.,

2. Sopan s/o Ambadas Warpe,
Age-40 years, Occ. Agril.,

Both R/o Savali-Vihir (Kh),
Tq. Rahata, Dist. Ahmednagar.

... **Petitioners**

Vs.

1. Saurabh s/o Bharat Chavan,
Age-15 years, Occ. Education,
Since Minor, represented through,
natural guardian mother,
Sau. Meena Bharat Chavan,
Age-35 years, Occ. Household,
R/o Savali-Vihir (Kh), Tq. Rahata,
Dist. Ahmednagar.

2. Sadashiv s/o Rangnath Chavan,
Age-55 years, Occ. Agril.,
R/o as above.

... **Respondents**

Mr. C.K. Shinde, Advocate for the Petitioners.

Mr. S.S. Chapalgaonkar, Advocate for the Respondents.

CORAM : P.R. BORA, J.
DATE : 03-04-2017.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally
with consent of the learned counsel appearing for the parties.

2. The order passed by the learned Civil Judge Senior
Division, Kopargaon on 01.07.2015 below exhibit-73 in Special Civil

Suit No. 19 of 2013 is challenged in the present petition.

3. The aforesaid application was filed seeking leave of the Court for adducing the oral evidence of Vilas s/o Rangnath Warpe i.e. petitioner no. 1 in the present petition, who is defendant no.1 in the civil suit. It was the contention of the petitioner in the said application that, though, defendant no.3 in his evidence before the Court has deposed that he was also deposing on behalf of defendant no.1, in his cross-examination he has shown ignorance of about some of the facts which are in the special knowledge of defendant no.1. It was the contention of petitioner no.1 before the trial Court that, to that extent he needs to be permitted to adduce his evidence before the Court, however, the said application has been rejected by the trial Court vide the impugned order. The trial Court has held that, allowing the defendant no.1 to now enter into witness box will have the effect of wiping out the admissions given by defendant no.3, in his cross-examination which may prejudicially affect the case of the original plaintiff.

4. Shri C.K. Shinde, the learned counsel appearing for the petitioner submitted that petitioner no.1 intends to depose before the Court, the only facts which are in his personal knowledge relating to the first sale deed executed on 12.08.2008 by defendant no.2 in favour of defendant no.1.

5. Shri Chapalgaonkar, the learned counsel appearing for

the respondents has supported the impugned order stating that, through-out the defendant nos. 1 and 3 are jointly defending the suit. The learned counsel submitted that, even the application at exhibit-73 was jointly filed by both these defendants. The learned counsel submitted that, from the application it is not clear as to what extent the evidence is sought to be adduced by the witnesses to be examined. In such circumstances, the trial Court has rightly rejected the application.

6. After having considered the submission, it appears to me that, if the petitioner no.1 is allowed to adduce his oral evidence in respect of first sale transaction dated 12.08.2008 which is admittedly in his special knowledge, no prejudice is likely to be caused to the present respondent i.e. original plaintiff. To that extent, the request made by the petitioner no.1 needs to be accepted. Hence, the following order is passed.

ORDER

- i) The impugned order dated 01.07.2015 passed by learned Civil Judge Senior Division, Kopargaon below exhibit-73 in Special Civil Suit No. 19 of 2013 is set aside.
- ii) The learned C.J.S.D. shall permit petitioner no.1 i.e. original-defendant No.1 to adduce his oral evidence restricted to first sale transaction dated 12.08.2008 and the facts which are in his special

knowledge.

iii) Writ petition stands allowed to the aforesaid extent.

(P.R. BORA)
JUDGE