

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 10649 OF 2017

MIR RAZZAK MIR AHMED ALI DIED LRS AND OTHERS  
VERSUS  
THE MAHARASHTRA SANSKRITIK MANDAL AND OTHERS

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Advocate for Petitioners : Shri Kasliwal Ajit D.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: August 31, 2017

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PER COURT :-

1. The petitioners are aggrieved by the order dated 17.8.2017, by which, application Exhibit 814 in Special Civil Suit No.69 of 1972 has been rejected.

2. The submission of the learned counsel for the petitioners is that as these petitioners are the plaintiffs in the suit and they have a right to cross-examine the first witness of defendant No.1. It is further contended that the suit was instituted in 1972 by the deceased Aminabegum w/o Ahmed Ali. Had the plaintiff been alive even today, the said plaintiff would have cross-examined the first witness of defendant No.1. As the plaintiff passed away, four L.Rs. were brought on record. Each of these L.Rs. appointed an independent Advocate. Subsequently, plaintiff No.2

(L.R.No.2) passed away and six of his L.Rs. have now come on record. As such, nine plaintiffs are now on record and there is a possibility that each of them would desire to cross-examine the said witness.

3. It is further submitted that after plaintiff No.1 i.e. the first L.R. of Aminabegum cross-examined DW 1 through the Court Commissioner, it is now the turn of the other plaintiffs to cross-examine DW 1. Section 37 of the Indian Evidence Act, 1872 does not create any embargo. By application Exhibit 814, it was prayed that plaintiff No.2 be permitted to cross-examine DW 1. Plaintiff No.2 has subsequently passed away and as noted above, six L.Rs. have been brought on record. Exhibit 814 has been filed by Mir Aiyaz Ali, who is plaintiff No.2(iii).

4. Shri Kasliwal, learned Advocate has strenuously criticized the impugned order by which Exhibit 814 has been rejected. He submits that whether it is one plaintiff or any number of plaintiffs, they cannot be precluded from cross-examining DW 1.

5. I have considered the submissions of the learned counsel for the petitioner.

6. It is apparent that deceased Aminabegum was the sole plaintiff. Her four L.Rs. were brought on record. In fact, these L.Rs. could have continued with the earlier Advocate or could have engaged another Advocate. Each of them have engaged a separate Advocate. In such circumstances and more so when the suit is filed for seeking possession of the suit property and not for partition and separate possession, it was expected that these plaintiffs would decide as to which Advocate would cross-examine DW 1.

7. If the argument of the learned counsel for the petitioner is accepted, each of the plaintiffs, who in these peculiar circumstances have come on record only as L.Rs., would have to be permitted to cross-examine DW 1. The possibility of repetition would be very high and it would be difficult to impose fetters upon these plaintiffs in cross-examining DW 1 for preventing repetition in cross-examination.

8. So also, if any plaintiff now passes away and a few more L.Rs. come on record, the same analogy will have to be applied and each of them will have to be permitted to cross-examine DW 1. An example of this kind is available on record, wherein, L.R. plaintiff No.2 has passed away and six of his L.Rs. have come on

record. It would be endless to permit each of these L.Rs. to cross-examine DW 1.

9. Considering the above, I do not find that the impugned order could be termed as being perverse or erroneous or likely to cause gross injustice to the petitioners.

10. This petition being devoid of merits, is, therefore, dismissed.

( RAVINDRA V. GHUGE, J. )

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