

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

WRIT PETITION NO. 43 OF 2016

Shaikh Osman s/o Shaikh Kader,
age 65 years, occ. Business,
R/o at present Opp. Anam Complex,
Fajalpura, Labour Colony, Aurangabad

...Petitioner
Orig.Plaintiff

VERSUS

1) Shaikh Zafar s/o Shaikh Kader,
age 45 years, occ. Business,
R/o Karim Colony, Roshangate,
House No. 4-11-44, C.T.S. No. 11072,
Aurangabad,

2) Smt. Nasim Begum w/o Shaikh Kalim,
age 40 years, occ. Household,
R/o Karim Colony, Roshangate,
House No. 4-11-44, C.T.S. No. 11072,
Aurangabad,

3) Shaikh Ibrahim s/o Shaikh Kalim,
Minor, (Under Guardianship
of real mother Respondent No.2)

...Respondents
Orig. defendants

...

Shri A.D.Kasliwal, Advocate for Petitioner
Mr. R.R.Shaikh, Advocate for Resp. Nos. 1 to 3

...

CORAM : N.W.SAMBRE, J.

DATED : 15th November, 2017

PER COURT :-

In Regular Civil Suit No. 296 of 2013 after issues were framed the petitioner plaintiff filed purshis claiming that he is not interested in leading any evidence, however, he shall lead evidence in rebuttal qua issue nos. 4, 5 and 6.

2. The respondents-defendants have also not led any evidence. As such, petitioner/plaintiff moved application (Exh.21) for permission to lead evidence in rebuttal on issue Nos. 4, 5 and 6, which is rejected by the learned 3rd Joint Civil Judge, Junior Division, Aurangabad vide impugned order dated 24.4.2015 As such this petition.

3. Learned counsel for the petitioner Shri Kasliwal would urge that it is always open for the petitioner to lead evidence pursuant to the provisions of Order XVIII Rule 3 of the Civil Procedure Code, as the evidence in rebuttal in accordance with law does not mean that it has to rebut examination-in-chief given by the defendants while proving certain issues.

4. Per contra, by inviting attention of this Court to provisions of Section 101 of the Evidence Act, learned counsel for respondents/defendants would urge that it was burden on the present petitioner who has instituted the suit to prove issues No. 1 to 3.

5. I have considered the rival submissions.

6. In view of steps taken by the petitioner, particularly by

filing purshis at Exh.20, learned trial Court, in my opinion, having regard to the provisions of Section 101 of the Evidence Act, has rightly passed the impugned order. No illegality in the impugned order could be noticed which would prompt interference.

7. Petition fails and stands dismissed accordingly.

[N.W.SAMBRE, J.]

dbm