

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3371 OF 2016

Prabhakar Narayan Thotam.

...Petitioner

Versus

Yashwant Narayan Thotam & Ors.

...Respondents

.....

Mr.Bhushan Walimbe for the Petitioner.

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CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: JUNE 7, 2017

P.C. :

1. Rule. Rule made returnable forthwith. By consent, petition is heard finally and disposed of at the stage of admission.
2. This petition is directed against the order dated 04.03.2015 passed by the learned Civil Judge, Junior Division, Devgad, thereby allowing the application for recalling the witness for re-examination.
3. The application at Exhibit 68 for recalling the witness for re-examination was moved by defendant no.1. The petitioner/ plaintiff had filed the Suit for partition and in the said Suit, defendant no.1 had taken a defence that the deceased father had bequeathed the entire property to him and his son. Thus, the proof of the said Will is an issue

before the Court. Defendant no.1 has tendered the evidence of Mr. Ramchandra Bapu Mhapsekar, who is one of the attesting witnesses of the said Will. Defendant no.1 has filed the affidavit of examination in chief of his witness i.e. Mr. Ramchandra B. Mhapsekar on 17.09.2014. Thereafter, he was cross examined by the learned counsel for the petitioner on 05.11.2014 and 19.11.2014. After completion of cross examination of the witness, the learned counsel for defendant no.1 has filed the application at Exhibit 68 praying that the witness Mr. Ramchandra B. Mhapsekar be re-called for re-examination. The permission was asked on the ground that the cross examination had started in the absence of the learned counsel for defendant no.1 and the Will at Exhibit 67 was required to be shown to the witness, as it was not shown during the examination in chief of witness i.e. Mr. Ramchandra B. Mhapsekar. The said application was opposed, but it was allowed. Hence, this Writ Petition.

4. The learned counsel for the petitioner submits that the petitioner/ plaintiff has cross examined the witness at length. Due to the permission to recall the witness, the effect of the cross examination is diluted. He further submits that it will cause prejudice to the plaintiff and the order passed by the learned trial judge is erroneous, rigorous and it is to be set aside.

5. Perused the application at Exhibit 68 and the impugned order. Also perused the examination in chief and the cross examination of witness Ramchandra B. Mhapsekar. It appears from the record that the said Will at Exhibit 67 was inadvertently not shown to the witness by the learned counsel for the plaintiff. The said Will is exhibited and it is a material issue before the Court. Therefore, the order of recalling the witness for re-examination cannot be faulted with, as the learned trial Judge has specifically mentioned that re-examination of the witness will be restricted only on the point to show disputed Will Deed and the signature over it.

6. In view of the above, Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)