

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

WRIT PETITION No. 8743 OF 2016

Mr. Tukaram Genuji Satav
since deceased through LR's
Smt.Sushilabai Tukaram Satav & Ors. ...Petitioners

Versus

Smt. Mangal Gopichand Raut & Anr. ...Respondents

**WITH
WRIT PETITION No. 6152 OF 2016**

Mangal Gopichand Raut & Anr. ...Petitioners

Versus

Mr. Tukaram Genuji Satav & Ors. ...Respondents

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Mr.Uday P. Warunjikar for the Petitioners in Writ Petition No. 8743 of 2016 and Respondent Nos. 2 to 5 in Writ Petition No. 6152 of 2016.
Mr.Vaibhav A. Sugdate for the Petitioners in Writ Petition No. 6152 and Respondent No. 2 in Writ Petition No. 8743 of 2016.

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**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED : APRIL 11, 2017**

P.C. :

1. In these Writ Petitions, the parties are same. They are filed these petitions against each other and litigating as the plaintiffs and the defendants in Special Civil Suit No. 81 of 2011 before Civil Judge, Senior Division, Pune.

2. In Writ Petition No. 8743 of 2016, the petitioners who are the defendants have challenged the order dated 4th April 2016 passed by the learned 4th Additional Judge, Small Causes Court and Jt. C.J.S.D., Pune below Exhibit-376 in Special Civil Suit No. 81 of 2011. The plaintiffs have filed the Suit for partition and separate possession. The parties have led their respective evidence before the trial Court. The matter was fixed for argument and in between this application below Exhibit-376 is filed under Order XIV Rule 5 of the Code of Civil Procedure for seeking permission for deletion and recasting of additional issues. I have perused the order dated 4th April 2016 especially the reason mentioned in paragraph 7 of the said order. The view taken by the learned Judge cannot be faulted with.

3. The Writ Petition No. 6152 of 2016 has filed by the original plaintiffs, who moved an application below Exhibit 382 wherein they prayed that the defendants not to lead further evidence and other witnesses are not to be allowed to be examined. Therefore, the application below Exhibit 382 filed by the plaintiffs praying that affidavit of examination in chief filed by two witnesses of defendants below Exhibits 377 ad 378 is to be discarded. The reason for the same is that the witness of defendants Rajendra was cross examined at length. He did not make himself available for further cross.

4. Perused the order. The party cannot be precluded from tendering further evidence. The party himself is not made available for further cross examination. The evidence of such witness whose cross examination is not complete is a matter of appreciation. I do not find any reason to interfere with the order passed by the learned Judge of the trial Court. Hence, both Writ Petitions are dismissed.

(MRIDULA BHATKAR, J.)