

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

WRIT PETITION NO.7040 OF 2015

Manohar Dattatray Joshi & anr. ... Petitioners

Vs.

Mangala Anant Mulay
since deceased, through
1A. Ashok Anant Mulay & Ors. ... Respondents

Mr.Bhushan Walimbe for the Petitioners
Mr.C.J. Chauhan i/b Clayderman Co. for Resp. Nos.1A, 1B & 2

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JUNE 13, 2017**

P.C. :

1. Rule. Rule made returnable forthwith. By consent of the parties, Writ Petition is taken up final hearing at the stage of admission itself.
2. This Writ Petition is directed against the order dated 2.1.2015 passed by the learned Joint Civil Judge, Senior Division, Ratnagiri, in the order passed below exhibit 128 in Regular Civil Suit No.166 of 200 thereby rejecting the application requesting for the appointment of Court Commissioner to record the cross-examination of defendant No.8 Mrs.Medha Madhusudhan Vaidya, who resides at Kurla, Mumbai.

3. Learned Counsel for Respondent Nos.1A, 1B & 2, who are the main contesting parties, is present.

4. The learned Counsel for the petitioners submits that they were defendant Nos.1 and 2. The original plaintiff had filed suit for partition and separate possession at Ratnagiri. During the pendency of this suit, the petitioners had filed application for cross-examination. Defendant No.8 Medha M. Vaidya was then around 76 to 77 years old, and as on today, she is 80 years old and it is not possible for her to travel out of Mumbai. He submits that the petitioners are ready to bear the costs of the Commissioner. The learned Counsel for the respondents submits to the orders of the court.

5. Perused the impugned order. Considering the facts and the age of the defendant No.8, the order of the trial Court dated 2.1.2015 is set aside. The Petition is allowed on the following terms:

- i) The petitioners i.e., the original defendant Nos.1 and 2 shall bear the fees of the Court Commissioner and also the travel expenses of the Court Commissioner and the learned

Counsel for the plaintiff and the plaintiff, which shall be fixed by the trial Court.

ii) The cross-examination is to be conducted in a day or in one visit which shall not exceed for more than two days.

iii) The parties shall cooperate and the work is to be completed on or before 16.7.2017.

iv) Parties to appear before the trial Court on 17.6.2017 at 11 a.m.

6. Rule made absolute accordingly.

(MRIDULA BHATKAR, J.)