

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

WRIT PETITION NO. 5611 OF 2015

**SINDHUBAI W/O PRABHAKAR DURATKAR
VERSUS
SANTRAM S/O BALAJI BORKAR DIED AND OTHERS**

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Advocate for the Petitioner : Shri K. F. Shingare
Advocate for Respondent Nos. 2 and 3 : Shri P. N. Kalani
Advocate for Respondent No.4 : Shri S. S. Rathi.

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 26th NOVEMBER, 2018.

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PER COURT :

1. The petitioner/original plaintiff is aggrieved by the order dated 21/04/2015, by which, the Trial Court has rejected application Exhibit 151 filed by the plaintiff seeking leave to lead further evidence in RCS No.45/2009.

2. I have heard the learned Advocates for the respective sides and have gone through the petition paper book with their assistance.

3. It is undisputed that the issues were re-cast by the Trial Court on 05/02/2015. It is informed that issue Nos. 1 and 2

appearing in the order dated 05/02/2015 were re-cast and the issues were re-arranged. The learned Advocate for the plaintiff reiterates that after the issues were re-cast on 05/02/2015, the plaintiff did not lead any evidence and he closed his oral evidence on 18/03/2015.

4. It is the further contention of the plaintiff that she acquired certain documents from the revenue authorities on 16/04/2015 and hence moved an application Exhibit 145 dated 21/04/2015 seeking leave to place the documents on record. The said application was allowed. Then an application Exhibit 151 was filed on the same date praying for leave to further examine the plaintiff. Same is rejected by the impugned order. Reliance is placed upon the judgment of this Court in the matter of *Rajesh Varma Vs. Aminex Holdings and Investments and others, 2008(3) Mh.L.J. 460* contending that further examination in chief can be permitted.

5. Insofar as the first issue is concerned, it appears that the plaintiff has made a misleading statement that no evidence was led after the issues were re-cast. The record reveals that

the issue Nos. 1 and 2 having been re-cast on 05/02/2015, the plaintiff was given the liberty to lead evidence. The plaintiff led evidence through Baburao Bhausakha Shahane by entering an affidavit in lieu of examination in chief below Exhibit 138. Later on the plaintiff gave up such examination of the said witness. Then, the plaintiff entered the affidavit in lieu of examination-in-chief of Dnyaneshwar Marotrao Khandare below Exhibit 140 on 04/03/2015. On 18/03/2015 the plaintiff tendered an evidence closing purshis at Exhibit 141. The plaintiff declined to step into the witness box, by choice.

6. Defendant No.2 filed an evidence closing purshis below Exhibit 142 and defendant No. 4 filed a similar purshis on 31/03/2015 below Exhibit 143. The matter was listed for final arguments on 31/03/2015.

7. In view of the above, the statement made by the plaintiff that no evidence was led in between 05/02/2015 and 18/03/2015, is a misleading and erroneous statement.

8. Further contention of the plaintiff is that as she received

some old records from the revenue authorities, she desired to lead further examination-in-chief of the plaintiff. It is contended that such records were received on 16/04/2015 and hence, the plaintiff moved an application on 21/04/2015.

9. I find that the learned Advocate for the defendants has rightly submitted that once the matter was listed for final arguments, the plaintiff has to make out an exceptional case which would convince the Trial Court to permit her to step into the witness box. The only ground put forth by the plaintiff is that old revenue records were received and hence the plaintiff should be examined. This cannot be a ground for reversing the case from the stage of final arguments to the stage of recording evidence of the plaintiff. It is then contended that the plaintiff desires to lead evidence only on the issues viz. (1) Whether the plaintiff proves that she is the owner of the suit property ? And (2) Whether the plaintiff proves that deceased defendant No.1 Santaram Balaji Borkar was of unsound mind.

10. Exhibit 151 does not contain any pleadings as to why

the plaintiff did not step into the witness box and why she chose to keep herself away from deposing in her case. Moreover, the prayer to examine the plaintiff is based on receiving old documents. Exhibit 151 does not contain any pleadings as to which are the documents which the plaintiff received and which are connected with the said two issues. There was no material before the Trial Court to consider as to whether the plaintiff received such documents which would strengthen her case in relation to issue Nos. 1 and 2. If none of the documents received subsequently have relevance with the said issues, then the situation is no different than the stage at which the plaintiff closed her evidence.

11. In *Rajesh Varma (supra)*, the issue was as to whether the plaintiff can lead further examination-in-chief after having tendered an affidavit in lieu thereof. This Court concluded that after entering an affidavit in lieu of examination-in-chief, the deponent is not precluded from stepping into the witness box for further oral examination-in-chief. Similarly, this Court, in the matter of *Banganga Co-operative Housing Society Limited and others Versus Vasanti Gajanan Nerurkar and*

others 2015 (5) Bom. C.R. 813 and Digambar Ramchandra Bawaskar Vs. Soma Prabhu Pawar and others, 2018 (1) Mh.L.J. 169, held that before the deponent is subjected to the cross-examination, he can either step into the witness box or lead further oral examination or can also file an additional affidavit by way of examination-in-chief in addition to the earlier affidavit. This is not the case in the matter in hand.

12. Considering the above and since Exhibit 151 does not contain any reasons or relevance with the old documents received and with issue Nos. 1 and 2, I find that the Trial Court cannot be faulted in passing the impugned order.

13. This petition, being devoid of merit is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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