

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

4 WRIT PETITION NO. 11970 OF 2015

BABASAHEB @ BABURAO NARAYAN NARWADE (PATIL)
VERSUS
APPARAO NARAYAN SHELKE DIED THROUGH LRS
KAUSHALYABAI APPARAO SHELKE AND OTHERS

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Advocate for Petitioner : Mr. V. D. Gunale
Advocate for Respondent Nos.1-A, B to E, F, G, H,I, K, L, M,
N : Mr T M Venjane

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CORAM: V. K. JADHAV, J.
DATED: 26th February, 2018.

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PER COURT :-

1. Heard finally with consent at admission state.
2. Being aggrieved by the common order passed by the trail court below Exhs.143 and 145 in Regular Civil Suit No. 65 of 2005, petitioner / original defendant No.1 has filed this writ petition.
3. Brief facts giving rise to the present writ petition are as follows :
 - A) The respondent / original plaintiff has instituted the suit for declaration of ownership and the decree of perpetual injunction in respect of the suit property as against the

petitioner / defendant No.1 and one another. The plaintiff has examined himself. However, the petitioner /defendant no.1 and his counsel remain absent and therefore, on 16.04.2014 the trial court has passed no cross order as against the present defendant no.1. Meanwhile, the plaintiff has sought the permission to lead secondary evidence in respect of certain documents and after the permission granted to him by the trial court, examined one witness as PW-2. However, the trial court has not permitted the petitioner / defendant no.1 to cross-examine the said witness by passing an order dated 21.02.2015. Thereafter, the petitioner / defendant no.1 has filed applications Exh.143 and 145 for setting aside the aforesaid orders. However, the trial court by impugned order dated 12.06.2015 has rejected both the applications. Hence, this writ petition.

4. The learned counsel for the petitioner/original defendant No.1 submits that the petitioner is 85 years of age and he is suffering from various age-old diseases. He could not appear and effectively cross-examine the witnesses of the plaintiff and as such the trial court has passed the aforesaid order. Even though, the petitioner has shown sufficient reasons in his

applications Exh.143 and 145 respectively, the trial court has not considered the same. The learned counsel submits that the dispute pertains to the immovable property and considering the age of the petitioner, he may be given one more chance to cross-examine the witnesses of the plaintiff. The learned counsel submits that as directed by this court, the petitioner has deposited an amount of Rs.15,000/- to show his *bonafides*, in case, the writ petition is allowed.

5. The learned counsel for the respondent / original plaintiff submits that this is the suit of the year, 2005 and after commencement of the trial, the plaintiff has examined himself on 16.04.2014. However, the petitioner and his counsel remain absent and therefore, the trial court has passed no-cross order. Even after obtaining the permission to lead secondary evidence, the plaintiff has examined PW-2. However, even that time also due to absence of the petitioner and his counsel, the trial court on 20.02.2015 has passed no-cross order. The petitioner has not given satisfactory reasons in his application Exh-143 and 145 and as such the trial court has rightly rejected the said applications. The petitioner has not produced any medical certificate in support of his

contention that due to some illness, he could not appear before the court when the plaintiff has examined his witnesses.

6. The petitioner is 85 years of age. It is true that he has not submitted any medical certificate in support of his contentions. However, considering his age, there appears some substance in the contentions raised by the petitioner that he is suffering age-old ailments. The petitioner has also deposited Rs.15,000/- before this Court to show his bonafides. The dispute pertains to the immovable property. I am inclined to give one opportunity to the petitioner to cross examine the plaintiff and his witnesses and further to lead his evidence in support of his defence. However, the petitioner is required to be saddled with costs for that purpose. Hence, the following order.

ORDER

1. Writ petition is allowed.
2. The impugned common order dated 12.6.2015 passed below the applications at Exhs. 143 and 145 in RCS No.65/2005 are hereby quashed and set aside.

3. Applications at Exh.143 and 145 are hereby allowed as per its prayers, subject to costs of Rs.15,000/- (Rs. Fifteen thousand only).
4. The petitioner has already deposited the said amount before this court. The same shall be paid to the respondent/ original plaintiff.
5. The petitioner/original defendant No.1 shall cross-examine the plaintiff and his witnesses as per the dates fixed by the trial court without fail and further to lead his evidence, if any, on the date, as fixed by the trial court.
6. The trial court shall dispose of the suit as expeditiously as possible, preferably within a period of three months from the date of this order.
7. Writ petition is accordingly disposed of.

(V. K. JADHAV, J.)

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vsm/-