

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11518 OF 2015

CHANDRARAO HANUMANTRAO WABLE
VERSUS
DHONDU FULA PATIL

...

Advocate for Petitioners : Mr. Indrajeet S. Thorat

Advocate for Respondents : Mr. U.S. Patil

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CORAM : V. K. JADHAV, J.

DATED : 23rd JANUARY, 2018

PER COURT:-

1. Heard.
2. Being aggrieved by order dated 30.09.2015, passed by learned Civil Judge, Junior Division, Chalisgaon, below Exh.93 in Regular Civil Suit No.96 of 2007, the original defendant has preferred this writ petition.
3. The petitioner-defendant has filed an application Exh.93 for recalling the witness for cross examination on certain points. The respondent-plaintiff has resisted the said application. The trial court has rejected the application Exh.93. Hence, this writ petition.
4. Learned counsel for petitioner-defendant submits that the respondent-plaintiff has instituted the suit for removal of

encroachment and for recovery of possession of the encroached portion as per the measurement report submitted by the T.I.L.R. The respondent-plaintiff has examined said T.I.L.R. as his witness, however, the said witness is required to be recalled for his cross examination by the petitioner on the basis of certain circulars and documents. Learned counsel submits that in reply to application Exh.93, the respondent-plaintiff, in the alternate, submitted that the application may be granted subject to payment of some costs. The petitioner-defendant is thus ready to pay the costs if his application Exh.93 is allowed.

5. Learned counsel for the respondent-plaintiff submits that the said surveyor was subjected to cross examination at length by the petitioner-defendant and since the petitioner-defendant has given certain admissions in his cross examination, the petitioner wants to recall the said witness to fill up the lacunae. Learned counsel submits that the trial court has thus rightly rejected the application. No interference is called for.

6. It appears that the respondent-plaintiff has instituted the suit for removal of encroachment and for recovery of possession of encroached portion. Thus, it is for the respondent-plaintiff to substantiate his case and burden is also on the respondent-plaintiff

to prove his case. It is also a matter of record that the petitioner-defendant has given certain admissions in his cross examination and the petitioner has therefore moved application Exh. 93 for recalling the said witness. Learned Judge of the trial court has therefore, rightly observed that the petitioner-defendant cannot be permitted to fill up the lacunae in this way. Even if certain circulars and guidelines, as referred, are not complied with by the surveyor, the petitioner-defendant is always at liberty to point out the same to the court at the time of final arguments and it is for the respondent-plaintiff to substantiate his case.

7. In view of above, I do not find any substance in this writ petition. Hence, the following order:-

O R D E R

Writ petition is hereby dismissed. No costs.

(V. K. JADHAV, J.)

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