

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

WRIT PETITION No.184 OF 2018

Smt.Shevantabai Harge & Ors. ... Petitioners

Vs.

Jagdish Ganpati Harge & anr. ... Respondents

Mr.S.S. Koregave for the Petitioners

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 3, 2018**

P.C. :

1. In this petition, the original plaintiff challenges the order dated 3.10.2016 passed by the learned Civil Judge Senior Division, Ichalkaranji, below exhibit 35 in RCS No.304 of 2012. the plaintiff has filed a suit seeking the order injunction that defendant No.1 should not use the name of the father of the plaintiff. The defendant No.1 i.e., the respondent No.1 herein, filed written statement and thereafter the Court framed issues. The core issue involved in the suit is whether the defendant No.1 is the son of Ganpati Harge, the father of the plaintiff Nos.2 and 3. the application was made by the plaintiffs requesting the Court to direct the defendants to begin and open evidence. The application

was rejected in view of the language of Order 1 Rule 18 of the Civil Procedure Code. Hence, this Writ Petition.

2. The learned Counsel for the petitioners submits that the impugned order is illegal. Considering the relief claimed by the plaintiffs in the suit and the issues framed thereafter; undoubtedly cast initially a major burden on the defendant. If the defendant prove this fact that he is the son of the Ganpati Harge, then, the plaintiffs' Suit would be dismissed and therefore, the Court should direct the defendant to begin the evidence. In support, he relied on the the judgment of this Court in the case **Haran Bidi Suppliers & anr. vs. V.M. & Co. through Ambubhai s/o. Jivrajbhai Seth.**¹

3. Perused the impugned order; plaint and the issues framed by the trial Court. It is true that the principal burden lies on the defendant to prove that he is a son of Ganapati Harge i.e., the father of plaintiff Nos.2 and 3. However, the plaintiffs have started their case on the basis of a negative proposition that the defendant is not a son of Ganapati Harge. Generally, a negative burden cannot be cast on any party. However, the plaintiffs have pleaded

¹ 2001 (2) Bom. C.R. 209

certain things about the name of the father of the defendant. Under such circumstances, in fact, the trial Court can cast a positive burden on the plaintiff and an issue can be framed as, whether the plaintiffs prove that the defendant is the son of one Shrikrishna Mane? Accordingly, the positive burden can be cast on the plaintiffs as per their case.

4. In the case of **Haran Bidi Suppliers & anr. (supra)**, the learned Judge has held that the trial Judge can ask the defendant to begin first but it does not mean that the defendant can be directed to enter the box and can be ordered to lead evidence in view of Order 18 Rule 1 of the Civil Procedure Code.

5. The reasons given by the learned trial Judge and the view taken are legal and correct. No interference is called for with the impugned order. Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)