

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.739 OF 2017

Shri Ajitkumar Dharmagonda Patil	... Petitioner
v/s	
Smt Sonabai Appaso Patil and others	... Respondents

Mr Prashant Bhavake for Petitioner.
None for Respondents.

CORAM : B.P. COLABAWALLA J.

DATE : 28TH NOVEMBER, 2018.

P.C. :-

1. This Writ Petition challenges the order dated 29th April 2016 rejecting the application filed by the Petitioner seeking a prayer that the affidavit of evidence filed on behalf of the original Plaintiff ought to be rejected. This submission was made on the basis that evidence has been led by the power of attorney-holder of the original Plaintiff and not the Plaintiff himself. This application of the Petitioner came to be rejected by the Trial Court vide the impugned order and hence the present Writ Petition.

2. After going through the papers and proceedings and

hearing the learned counsel appearing on behalf of the Petitioner, I do not think that this Writ Petition ought to be entertained at this stage. Section 105 of the C.P.C. clearly provides that where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set-forth as a ground of objection in the memorandum of appeal. In other words, what section 105 of the C.P.C. contemplates is that if any order is passed during the trial of the Suit and if adverse to a party, the same can be challenged when an appeal from the final decree is filed. This being the case and leaving this contention open for the Petitioner, this Writ Petition need not be entertained.

3. It is accordingly dismissed. However, there shall be no order as to costs.

(B.P. COLABAWALLA J.)