

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 11392 OF 2018

Shri. Rajmani Benimadhav Malviya

(Since deceased) through L.Rs.

1.Shri Dashrat R. Malviya and Anr.

..Petitioners.

Versus

Smt. Ramdulari C. Mishra (Deceased)

and others.

..Respondents.

....

Mr. D.D. Singh, Advocate for the Petitioners.

Mr. E.K. Sasidharan, Advocate for Respondents No.1, 2(a) to 2(c).

....

CORAM : R. G. KETKAR, J.

DATE : 15th OCTOBER, 2018

P.C.

1. Heard Mr.D.D. Singh, learned counsel for the petitioners and Mr.E. K. Sasidharan, learned counsel for respondents No.1 & 2(a) to 2(c), at length.

2. Mr. Singh seeks leave to delete respondents No.3 & 4 on the ground that respondents No.1 and 2(a) to 2(c), being the plaintiffs, are the only contesting respondents. In view thereof, on the motion made by Mr. Singh leave to delete respondents No.3 & 4 is granted. Amendment shall be carried out forthwith.

3. This Petition takes exception to the order dated 3.9.2018 passed by the learned Judge, Court Room No.34 of the Court of Small Causes at Mumbai, Bandra Branch below Exhibit-194 in R.A.E. & R. Suit No.990/5881 of 1977. By that order, the learned trial Judge rejected application Exhibit-194 made by defendants No.1 & 2 claiming following prayers :

- a) That this Hon'ble Court may be pleased to allow permit D.W.1 for his re-examination and thereby order dt. 20/08/2018 of no reexamination be set aside;
- b) In the alternate to prayer clause (a) this Hon'ble Court may be please to allow and permit C.A. of defendants no 1 and 2 to produce original of document at Exhibit "A" hereto and the same may be marked exhibit in evidence;"

4. Rule. Mr.Sasidharan waives service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing.

5. I have considered the submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. A perusal of the record shows that cross-examination of DW-1

was over on 20.8.2018 and after noting that the cross-examination of DW-1 is over, the learned trial Judge recorded thus :

“No re-examination.”

6. In paragraph-1 of the application dated 21.8.2018, it is asserted that after completion of the cross-examination, oral application was made seeking permission to re-examine DW-1. The learned trial Judge issued oral directions to make written application for that purpose. Accordingly on the next day i.e. on 21.8.2018 application Exhibit-194 was made enclosing therewith copy of the communication dated 7.12.2009 as Exhibit-A.

7. A perusal of the reply filed by the plaintiffs and in particular paragraph-7 thereof shows that the plaintiffs did not dispute the contentions raised in paragraph-1. Thus immediately after the cross-examination was over on 20.8.2018 oral permission was sought for re-examination of DW-1. The learned trial Judge directed defendants No.1 & 2 to take out written application which was taken out on the next day. A perusal of paragraph-4 of the impugned order shows that the learned trial Judge has also made reference to the information furnished under Right to Information Act. In such state of affairs, the learned trial Judge was not justified in declining to grant the prayer of defendants No.1 & 2 in terms of prayer clause (b) of the application.

8. In view thereof, the impugned order dated 3.9.2018 is set aside and the application Exhibit-194 is allowed in terms of prayer clause (b). By way of abundant caution it is made clear that re-examination of DW-1 is restricted only to the extent of the reply dated 31.7.2018 sent by the Postal Department along with postal packet Exhibit-189 as also the letter dated 7.12.2009 issued by the Postal Department. Rule is made absolute in aforesaid terms with no order as to costs.

9. All concerned parties, including the trial Court, to act upon the authenticated copy of this order. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)