

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

WRIT PETITION NO. 13358 OF 2017

Dadaso Vishnu Suryawanshi
Deceased through LR's
Smt. Ushadevi Dadasaheb Suryawanshi
& Ors.

...Petitioners

Versus

Maruti Shankar Karande & Ors.

...Respondents

.....

Mr. Kalpesh U. Patil for the Petitioners.
Ms. Shraddha Pawar I/b. Mr. Dilip Bodake for Respondent No. 3.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: JUNE 05, 2018**

P.C. :

1. The learned Counsel for the petitioners has submitted that he could not serve respondent nos.1 and 2, who are the main contesting parties.

2. This Writ Petition is directed against the order dated 4th September, 2017 passed by the learned Civil Judge, Junior Division, Karad in Regular Civil Suit No. 165 of 2007.

3. The learned Counsel for the petitioners has submitted that the petitioners are the original plaintiffs and the evidence of the plaintiffs is over and they are examined T.I.L.R as PW-2 and the defendants have cross-examined him. However, the defendants moved an application for recalling the witness i.e. T.I.L.R for further cross-examination on the ground that some questions were left to be asked. He has further submitted that the learned Judge of the Trial Court has erroneously allowed the application for recalling the surveyor i.e. PW-2 for further cross-examination. The T.I.L.R i.e., PW-2 was examined on 7th December 2012, and the defendants moved the application for recalling the witness i.e., PW-2 for further cross-examination after five years. He has further submitted that to fill up the lacuna, the witness is recalled.

4. Heard submissions of the learned Counsel for the petitioners. Perused impugned order. The evidence of the defendants is not yet commenced. It appears that the evidence of the plaintiffs was going on for five years.

5. Be that as it may, before commencing the evidence, the defendants have moved the application for recalling the witness for further cross-examination. In the impugned order, the learned Judge of the Trial Court has considered the arguments of both the sides so also the case law relied and referred by both the sides. The learned Judge of the Trial Court has given reasons for allowing the application of recalling the witness. It appears that the learned Judge of the Trial Court also wants some clarification on the point of Division Map of Survey No. 08/4/2. The learned Judge of the Trial Court has every power to recall the witness under Order 18 Rule 17 of the Code of Civil Procedure. No illegality is found in the order dated 4th September, 2017 passed by the learned Civil Judge, Junior Division, Karad. Hence, Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)