

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

WRIT PETITION NO.2872 OF 2019

Sarasvati wd/o. Chandrakant Bhosale
Age : 60 years, Occu : Household,
R/o. Aute Galli, Near Old Zilla Parishad School,
Ausa, Tq. Ausa, Dist. Latur

.. Petitioner
(Orig. Defendant No.1)

Versus

1. Vasant s/o. Haridas Bhosale (Deceased)
Through LR's

1.1. Vimalbai Sudhakar Bhosale
Age : 55 years, Occu : Agril,

1.2. Kakasaheb Vasantrao Bhosale
Age : 53 years, Occu : Agril,

1.3. Ravindra Vasantrao Bhosale
Age : 57 years, Occu : Agril,

1.4. Surdas Vasantrao Bhosale
Age : 45 years, Occu : Agril,

1.5. Anita Shankar Shinde
Age : 46 years, Occu : Agril,

R.No.1.1 to 1.5 are R/o. Matola,
Tq. Ausa, Dist. Latur

1.6. Mangalbai Vishvnath Jagtap
Age : 59 years, Occu : Nil,
R/o. Karve Nagar, Hirkani Colony,
Pune, Tq. & Dist. Pune.

1.7. Savita Sureshrao Patil
Age : 50 years, Occu : Nil,

R/o. Ramtirth, Tq. Nilanga, Dist. Latur.

2. Gajanan s/o. Chandrakant Bhosale
Age : 28 years, Occu : Nil,
R/o. Aute Galli, Near Old Zilla
Parishad School, Ausa, Tq. Ausa,
Dist. Latur.

.. Respondents

(R. Nos.1.1 to 1.7 are the original
plaintiff & R. No.2 is Original
Defendant No.2)

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Advocate for Petitioner : Shri Manoj D. Shinde
Advocate for Respondent Nos.1.1 to 1.7 : Shri B.A. Shinde
Respondent No.2 – Served.

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CORAM : P.R. BORA, J.
Dated: April 12, 2019

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally
with the consent of the parties and taken up for final disposal at
admission stage.

2. The petitioner has filed the present petition taking
exception to the orders passed by the Court of Civil Judge,
Senior Division at Ausa on 11.02.2019 and 01.01.2019.

3. The petitioner on 01.01.2019 had submitted an
application at Exh.189 with a prayer that, the witness examined
by him was unable to remain present in the Court on that day

and on the said ground, the adjournment was sought. The learned Trial Court has rejected the said application and on the same day passed an order thereby closing the evidence of the defendant. The petitioner thereafter on 01.02.2019 filed another application at Exh.190 with a prayer that, 'evidence closed' order passed against her be set aside and she be permitted to adduce the further evidence. The Court has, however, rejected the said application also. Aggrieved by both the aforesaid orders, the present writ petition is filed.

4. The learned Counsel submitted that, on 01.01.2019 on oral request of the advocates, the Trial Court recast the issues. The learned Counsel pointed out that, issue no.3 to the effect that “Does defendant prove that, he is owner of suit property by adverse possession?” was framed for the first time. The learned Counsel submitted that, in the circumstances, the Trial Court must have given due opportunity to the defendant i.e. present petitioner to discharge the burden cast on him vide the aforesaid issue. The learned Counsel submitted that, ignoring the aforesaid fact, merely on the ground that the defendant has already examined nine witnesses, the Trial Court

has rejected the application and has passed the order thereby closing the evidence of the defendant. The learned Counsel, in the circumstances, prayed for setting aside both the aforesaid orders and consequently to permit the petitioner-defendant to adduce necessary evidence to substantiate the contentions raised by him in his written-statement and to discharge the burden cast on him vide the aforesaid recast issue no.3.

5. Shri B.A. Shinde, learned Counsel appearing for the respondents i.e. original plaintiffs has opposed the submissions made on behalf of the petitioner. The learned Counsel submitted that, ample opportunities were given to the defendant to adduce the evidence from his side. The learned Counsel further submitted that, as many as nine witnesses were already examined by the defendant and the only attempt of the defendant was to protract the hearing of the civil suit and that is the reason that, the Trial Court has rejected the request made by the petitioner – defendant. The learned Counsel submitted that, the Trial Court has rightly rejected the request of the petitioner and no interference be caused in the well reasoned order passed by the Trial Court.

6. I have gone through the orders passed by the Trial Court and other material placed on record. After having gone through the record of the case, it is apparently revealed that, the issues were recast on 01.01.2019 and on the same date, the learned Trial Court has closed the evidence of the defendant by rejecting his request for adjournment. I have also perused the issues earlier framed in the matter, which are at page no.24 of the paper book, wherein no specific burden was put on the defendant. In the recast issues, issue no.3, which I have reproduced herein above, the burden was cast on the defendant to prove that, he has become owner of the suit property by adverse possession? In the circumstances, the opportunity must have been given by the learned Trial Court to the defendant to adduce the necessary evidence in that regard. Merely because, the defendant has already examined 9 witnesses, could not have been the reason for rejecting his request to adduce the further evidence. The Trial Court has also not assigned any reason observing that, there was no necessity of examining the witness, which was intended to be examined. In the circumstances, the

impugned orders cannot be sustained and deserve to be set aside. Hence, the following order is passed.

ORDER

(i) The order dated 01.01.2019 passed below Exh.189 and the order dated 11.02.2019 passed below Exh.190 are set aside.

(ii) The petitioner – defendant shall submit the list of witnesses to be examined with sufficient particulars pointing out the necessity of examination of the said witnesses before the Court and the Trial Court shall consider the said application on its merits.

(iii) The petitioner - defendant shall without asking for any adjournment keep the witnesses present, if they are permitted to be examined by the Trial Court.

(iv) The Trial Court shall then expedite further hearing of the petition and decide the suit as expeditiously as possible.

(v) Rule made absolute in the above terms with no order as to costs.

(PR. BORA, J.)