

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

WRIT PETITION NO.5269 OF 2019

Nanasaheb s/o Yamaji Mohite,
Age : 39 years, Occupation : Agri,
R/o Mohitewasti, Rashin,
Tq.Karjat, Dist.Ahmednagar.

...PETITIONER
(orig.Defendant 1)

-VERSUS-

- 1 Bhausahab s/o Maruti Janbhare,
 Age : 50 years, Occupation : Agri.
- 2 Maruti s/o Pandurang Gawandi,
 Age : 55 years, Occupation : Agri.
- 3 Rukhmini w/o Pandurang Gawandi,
 Age : 50 years, Occupation : Agri,
 All R/o Modhalewasti, Rashin,
 Tq.Karjat, Dist.Ahmednagar.
 (Respondent nos.2 and 3 are deleted
 as per leave granted by Hon'ble
 Court vide order dated 26.07.2019).

...RESPONDENTS
(No.1 : Orig.Plaintiff)

...
Shri V.P.Latange h/f Shri D.B.Rode, Advocates for the petitioner.
Shri A.S.More, Advocate for respondent no.1.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 10th December, 2019

Oral Judgment :

- 1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2 The petitioner, original defendant no.1 in RCS No.17/2012, is aggrieved by the impugned order dated 15.03.2019 passed by the Trial Court, by which, an application exhibit 95 seeking reopening of evidence of the plaintiff after the recording of oral evidence of all the litigating sides has concluded, has been allowed.

3 I have considered the strenuous submissions of the learned advocates for the respective sides and have gone through the petition paper book with their assistance.

4 The learned advocate for the respondent no.1/ plaintiff submits that there is no dispute that after the issues were framed in 2013, the plaintiff commenced the recording of oral evidence and by purshis exhibit 73 dated 15.02.2018, the oral evidence was closed on his behalf. This was followed by recording of oral evidence of the defendant and on 08.10.2018, the defendant submitted the purshis declaring closing of his oral evidence. Thereafter, exhibit 95 has been filed on 26.10.2018 seeking leave to examine one more witness. It is conceded that the list of witnesses was not tendered to the Court earlier. It is also evident from exhibit 95 that the name of the witness sought to be examined is neither mentioned, nor I find even a single sentence as a justification as to why the plaintiff desires to examine one more witness and on what count.

5 In the absence of specific pleadings, the Trial Court has allowed the plaintiff to raise all issues while advancing oral submissions.

In the absence of any pleadings, the Trial Court entertained the submissions of the plaintiff and by imposing costs of Rs.3000/-, allowed exhibit 95 on the ground that no prejudice would be caused to the other side.

6 I find that the Trial Court has failed to apply it's mind to the law applicable. When the recording of oral evidence of all parties was concluded, when no name of a new witness is mentioned in exhibit 95 and such name is absent even from the list of witnesses, if tendered to the Court, the Trial Court should have been cautious as such conduct of the plaintiff amounts to manufacturing a witness and producing the witness in order to fill in the lacuna or deficiency after noting the oral evidence of the defendant.

7 In view of the above, the impugned order is apparently perverse and erroneous. This Writ Petition stands allowed. The impugned order dated 15.03.2019 stands set aside and the application exhibit 95 stands rejected.

8 Rule is made absolute in the above terms.

9 The amount that the plaintiff has deposited before the Trial Court pursuant to the impugned order, shall be returned to the plaintiff without interest.