

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

43 WRIT PETITION NO.3648 OF 2019

**RAJKUMAR JANKILAL SONI AND OTHERS
VERSUS
RAMAVTAR JANKILAL SONI**

Advocate for Petitioners : Shri Parag Vijay Barde

**CORAM : P.R.BORA, J.
DATE: 18th March, 2019**

PER COURT:-

1 Heard Shri P.V.Barde, learned Counsel appearing for the petitioners. The petitioners have preferred the present petition aggrieved by the order dated 22.01.2018, passed by 8th Joint Civil Judge, Junior Division, Jalgaon, below application Exh.82 in Regular Civil Suit No.324 of 2012.

2 The aforesaid application was filed by the present petitioners, who are the plaintiffs seeking permission of the Court to examine plaintiff No.4 i.e. Present petitioner No.4 as a witness and the said application has been rejected by the Trial Court.

3 The learned Counsel appearing for the petitioners submitted that the Trial Court has manifestly erred in rejecting the request of the petitioners – plaintiffs without assigning any good reason therefor. Relying on the Judgment of this Court in the

case of *Mukund Iron staff Association Co-op. Housing Society Ltd. Vs. Vasant Ramchandra Patil and Ors.* [2016 (3) ALL MR 721], the learned Counsel submitted that in such matters, the Courts must be in favour of letting the evidence laid on record even at a later stage.

4 In view of the submission so made, when I perused the impugned order, it is revealed that in the suit, which has been filed by the petitioners, it is their specific contention that the release deed Exh.25 was false and fabricated and prepared by the defendant to defraud plaintiff Nos.4 and 5. It is further revealed that the averments so raised in the plaint were specifically denied by the defendant in his written statement and specific issue was also framed in that regard. In spite of the aforesaid facts, plaintiff No.4 did not enter into witness box and the oral evidence of some other plaintiff was recorded. It is the matter of record that, thereafter, the evidence of defendant has been recorded and the matter is now fixed for argument. At such stage, application Exh.82 came to be filed.

5 After having gone through the discussion made by the Trial Court in the impugned order and the other material on record, it does not appear to me that the Trial Court has committed any

error in rejecting the request of the petitioners. The facts in the Judgment relied upon by the learned Counsel for the petitioners are bit different and as such the ratio laid down in the said Judgment may not apply to the facts to the present case. As has been rightly observed by the Trial Court, when it was specific plea raised in plaint itself, that the defendant had fraudulently got executed the release deed, by plaintiff No.4, with all priority, the plaintiffs were expected to examine the said witness. No such reason has been assigned as to why at the initial stage, the said witness was not examined and evidence close *purshis* came to be filed. Not only that the evidence was closed by the plaintiffs but thereafter the evidence of defendant has been recorded and matter was fixed for argument. Since no justifiable cause is made out by the plaintiffs, the Trial Court has rightly rejected the application. Petition being devoid of any substance deserves to be dismissed and is accordingly dismissed.

(P.R.BORA)
JUDGE

SPT