

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

918 WRIT PETITION NO.10653 OF 2018

DIGAMBAR MURLIDHAR CHATE
VERSUS
DILIP SHIVAJIRAO DESHPANDE AND ANOTHER

.....
Advocate for Petitioner : Mr. S. S. Thombre
Advocate for Respondent No.2 : Mr. M.K. Bhosale
.....

CORAM : V. K. JADHAV, J.
DATED : 19th NOVEMBER, 2019

PER COURT:-

1. Heard both sides.
2. In terms of provisions of Section 167 of Indian Evidence Act, 1872 and Section 99 of the Code of Civil Procedure, 1908, there will be no trial for improper admission or rejection of evidence. In the instant case, the respondents-original defendants have raised a plea that defendant No.1 was ill on 16.3.2000 and was under treatment of his doctor. In the context of the said basic plea, the evidence, such as name of doctor, nature of treatment which will be the part of evidence, need not be pleaded. Apart from this, even assuming that this amounts to improper admission of evidence, the trial court shall consider about the same at the time of final hearing of the suit and if the suit is not to be disposed of only on the basis of evidence of the aforesaid Medical Officer and the suit is required to be considered and disposed of on the basis of other evidence then in terms of the

provisions of Section 167 of the Indian Evidence Act, the trial court may not consider the objection. Otherwise, in terms of provisions of Section 167 of the Evidence Act, if the suit is to be disposed of only on the basis of the evidence now proposed to be adduced by the respondents-defendants, then it is for the trial court to consider the objection raised by the petitioner herein at the time of final hearing of the matter.

3. In view of the above observations, writ petition is disposed of.

(V. K. JADHAV, J.)

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