

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.916 OF 2018

Shrikant Govind Desai & 5 Ors. Petitioners

V e r s u s

Mahesh Madhusudan Prabhudessai
& 8 Ors. Respondents

Mr. P. A. Kholkar and Mr. Virendra R. Parshekar, Advocates for
the Petitioners.

Mr. Mahesh Amonkar, Advocate for the Respondent no.1.

Coram :- C. V. BHADANG, J.
Date : 28th June 2019.

ORAL ORDER

1. Heard Mr. Kholkar, the learned Counsel for the petitioner and Mr. Amonkar, the learned Counsel for the contesting respondent no.1. Perused record.

2. The challenge in this petition is to the order dated 07.07.2018, passed by the learned Trial Court in Regular Civil Suit No.35/2009 by which a question put to PW.1 in the cross examination relating to properties other than the property involved in the suit has been disallowed by the Trial Court.

3. The respondent no.1 has filed a suit against the petitioners and respondent nos.2 and 3 which only involves a

property which is designated as property II. There were in all 84 properties in respect of which Inventory Proceeding No.64/1949 was initiated upon the death of late Laxman and Sitabai. A perusal of the issues as set out by the learned Trial Court in para 8 of the impugned order shows that the only dispute involved in the suit in which there is also a counter claim by the petitioners is relating to suit property i.e. property II and nothing else.

4. Mr. Kholkar, the learned Counsel appearing for the petitioners has raised two contentions. First, that the cross examination need not be confined only to the examination in chief and in a given case, can travel beyond and the Court can permit cross examination on such aspects other than those contained in the chief examination. Secondly, it is contended that the question which was put to Pw.1 in respect of the 84 properties was in pursuance of a statement made in the chief examination by Pw.1 relating to these properties and this was otherwise relevant in order to test the veracity of the witness. The learned Counsel has placed reliance on the decision of this Court, in the case of **Ajit Sukhijia vs. Edgar Francisco Valles & Ors. 2016 (3) Mh LJ 242** and **P. vs. P. and R. AIR 1982 Bom 498.**

5. Mr. Mahesh Amonkar, the learned Counsel appearing for the respondent no.1 has supported the impugned order. It is submitted that the only issue involved in the suit is relating to property II and not the rest of the properties belonging to the family in respect of which already there have been Inventory Proceedings. It is thus submitted that the question relating to the rest of the properties cannot be said to be one aimed at testing the veracity of the witness. It is submitted that the learned Trial Court after a careful consideration of the matter has rightly come to a conclusion after framing the issues as below :

1. Whether the plaintiffs prove that they are co-owners in possession and enjoyment of the suit property ?
2. Whether the plaintiffs prove that defendants have illegally erected cement poles in the suit property ?
3. Whether the defendants 1 to 6 prove that plaintiffs have no right in the suit property?
4. Whether the defendants 1 to 6 prove that sale deed dated 09.10.2000 executed by parents of the plaintiffs is null and void ?

5. Whether the defendants 1 to 6 prove that they are entitled for recovery of possession of the suit plot ?

6. What relief ? What order ?

6. It can thus be seen that in the suit and the counter claim, the only disputed property appears to be the suit plot which is designated as plot II and not rest of the properties. It is not in dispute that the inventory which was initiated on the death of Laxman and Sitabai involved in all 84 properties. However, that by itself may not be sufficient to hold that the question relating to rest of the properties, (other than the one involved in the suit) becomes relevant. There cannot be any manner of dispute with the proposition that in a given case, the cross examination need not be confined to whatever has been stated by the witness in the chief examination and the Court in an appropriate case may permit cross examination to test the veracity of the witness. However, the question whether a particular question is relevant for the purpose of testing the veracity of the witness would be one of fact depending upon the facts and circumstances of each case.

7. In the present case, it is not possible to accept that the cross examination of Pw.1 in respect of properties which are

not subject matter of the suit can be said to be one which would be relevant for testing the veracity of the witness as has been rightly held by the learned Trial Court.

8. The two decisions cited on behalf of the petitioners, in my considered view, turned on their own facts. In para 5 of the judgment in the case of **Ajit Sukhijia** (supra), on which reliance was placed on behalf of the petitioners, this Court has held thus :

“5. I have given my thoughtful considerations to the learned Senior Advocates and with their assistance, I have also gone through the records. The cross examination of the witness is a weapon in the hands of the opposite party to establish the reliability or otherwise of a witness who is under cross examination. The witnesses are also cross examined to ascertain the credibility of such witness and also to see the veracity of the case put forward before the Court. Section 137 of the Evidence Act, inter alia, provides that the examination of a witness by the party who calls him shall be called his examination-in-chief, whereas the examination of a witness by the adverse party shall be called his cross examination. Section 138 provides that a witness shall first record the examination-in-chief and then if adverse party so desires, be cross examined,

thereafter if the party calling him so desires be re-examined. The examination and cross examination must relate to relevant facts, but the cross examination need not be confined to the facts to which the witness testifies on his examination in chief. On plain reading of the said provisions, the contention of Shri Sudin Usgaonkar, learned Senior Advocate appearing for the Respondents, that the cross examination has to be restricted only to the statements made in the examination-in-chief or in the pleadings cannot be accepted. It is always open in the cross examination to put questions in order that they can nullify or establish the veracity or otherwise of the allegations made in the proceedings.”

It is difficult to see as to how the aforesaid observations can come to the aid of the petitioners. In any event, this Court has observed that the cross examination must relate to the relevant facts. I have already held that the question in relation to properties which are not subject matter of the suit cannot be said to be relevant, as for testing the veracity of the witness.

9. The case of **P. vs. P. and R.**, was a matrimonial dispute in which two questions as set out in para 23 of the Judgment were disallowed. A perusal of para 23 would show that the question was essentially regarding a particular incident dated

29.11.1971 which was referred to in the chief examination, but was not part of the pleading in the written statement and thus was found to be relevant as a matter of omission. Both these cases clearly turn on their own facts.

10. I have carefully gone through the impugned order and it does not suffer from any infirmity so as to require interference.

11. The petition is without merit and is accordingly dismissed with no order as to costs.

C. V. BHADANG, J.

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