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

***CIVIL APPELLATE JURISDICTION***

***WRIT PETITION NO.2096 OF 2016***

Shamrao Balkrushna Chavhan ..Petitioner.  
V/s.  
Smt. Parinita Yadavrao Hire & Ors. ..Respondents.  
Mr.Prashant D.Patil for the petitioner.

***CORAM : N.J. JAMADAR, J.***

***DATE : SEPTEMBER 19, 2019***

**P.C. :-**

Heard learned counsel for the petitioner.

2. By this petition under Article 227 of the Constitution of India, the petitioner has assailed the order dated August 20, 2015, passed by the learned Civil Judge, Senior Division, Nashik, on an application Exhibit-56 in Special Civil Suit No.456/2013, whereby the learned Civil Judge rejected the prayer of the petitioner to file further examination-in-chief.

3. It is the case of the petitioner that he had purchased Plot No.13 out of Survey No.203/1+2+3/2 and 3 in Pathardi village, Taluka and District Nashik, admeasuring 376 sq. mtrs. on February 13, 2004 in the name of defendant No.2

Kum. Bhakti, who was a minor, and defendant No.1 was shown as a guardian. The entire consideration of Rs.87,000/- was paid by the petitioner. However, defendant No.1 had sold the said plot by executing a registered sale deed in favour of defendant Nos.3 and 4 on December 28, 2006, who have, in turn, sold the same to defendant Nos.5 and 6. Hence the petitioner-plaintiff instituted a suit for declaration that those sale deeds are null and void and are not binding upon the plaintiff.

4. After the plaintiff tendered affidavit of examination-in-chief, application Exhibit-56 came to be filed seeking permission to file additional examination-in-chief to the effect that the plaintiff had come in custody of the document, purporting to be an earnest note for a sum of Rs.1,00,000/- executed by original owner before the execution of the sale deed on February 13, 2004 in favour of defendant No.2.

5. Learned Civil Judge was, however, not inclined to permit the plaintiff to file additional examination-in-chief as there was apparent inconsistency in the case of the plaintiff, inasmuch as, the consideration for the sale deed executed on February 13, 2004 was Rs.87,000/- and the plaintiff now claimed that there was an earnest note of Rs.1,00,000/-. It

was further noticed that the plaintiff was neither the author nor the signatory to the said earnest note. Thus, the plaintiff was at liberty to examine witnesses, if he desired to, in order to prove the said earnest note.

6. Mr.Patil, learned counsel for the petitioner submitted that it is necessary for the plaintiff to prove the said earnest note in evidence in order to establish his case, and, therefore, the plaintiff be permitted to tender additional affidavit of examination-in-chief.

7. I am not inclined to accept the submissions on behalf of the petitioner as the reasons recorded by the learned Civil Judge appear cogent. Evidently, the case of the plaintiff that the original owner had executed an earnest note of Rs.1,00,000/- is contrary to the averments in the plaint that the plaintiff had parted with entire consideration of Rs.87,000/-. Secondly, there is no reference to the earnest note in the plaint and, thirdly, the opportunity to the plaintiff, to prove the said earnest note in evidence, if found necessary, by examining the witnesses is not foreclosed.

8. In the circumstances, the impugned order cannot be said to be either perverse or unreasonable, warranting interference in exercise of the writ jurisdiction. Hence the

petition fails and stands dismissed.

***(N.J. JAMADAR, J.)***