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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO.1397 OF 2019

Pandharinath Laxman Padekar & Ors. ..Petitioners.

V/s.

Lahanu Manga Gandal (since deceased)
through his LRs. & Ors. ..Respondents.

Mr.Nikhil M.Pujari for the petitioners.

Mr.R.P. Kadam, AGP for respondent No.4.

CORAM : M.S.SONAK, J.

DATE : APRIL 26, 2019

P.C.:-

Heard Mr.Pujari, learned counsel for the petitioners and Mr.Kadam, learned A.G.P. for the respondent-State.

2. Challenge in this petition is to the order dated December 5, 2018 by which learned trial Judge trial Judge has refused to recall his earlier order dated August 21, 2018 closing the evidence of the petitioners and thereafter declining the petitioners to lead evidence in the matter.

3. Mr.Pujari, learned counsel for the petitioners submits that the advocate who was appearing for the petitioner has relocated from Nashik to Mumbai and, therefore, the petitioners were unrepresented or

not represented before the trial Court. It is only for this reason why no evidence could be led at the behest of the petitioners. He submits that now a new lawyer is appearing and the trial Court is required to afford opportunity to the petitioners to lead their evidence in the matter.

4. In view of the aforesaid contention, according to me, no case is made out for interfering with the impugned order in exercise of the supervisory jurisdiction under Article 227 of the Constitution of India. The reason for this is that, it is evident from the impugned order dated December 5, 2018 which reads thus:-

“ Heard. Perused record. By way of the present application the defendant Nos.2 to 9 want to adduce evidence. Record shows that these defendants are absent throughout. Even they remained absent at the time of cross-examination of witnesses. These defendants seems to support plaintiff. Already their evidence has been closed on 21/08/2018. The suit is pending since 2010. The contesting defendant No.1 has closed his evidence and the suit is for final hearing. The present application is just moved to delay the proceeding. Hence, application is devoid of merit, same stands rejected. ”

5. Learned counsel for the petitioners admits that the petitioners in fact support the case of the original plaintiff. The record indicates that evidence of the original plaintiff has already completed. If the petitioners support the case of the original plaintiff, then, it is

obvious that the petitioners will have no better evidence to lead than what the plaintiff has already led in the matter.

6. Further, since the petitioners i.e. defendant Nos.2 to 9 support the case of the plaintiff, it was necessary that the petitioners could have offered to lead the evidence no sooner the evidence of the plaintiff was completed and before the evidence of contesting defendant No.1 commenced. Obviously, this was not done by the petitioners. The record indicates that the petitioners were absent throughout and they did not choose to cross examine any witness. The application was made at the stage when the matter was fixed for final arguments. Learned trial Judge made an observation that this application was filed to delay the proceedings and the suit was pending since 2010. There is no jurisdictional error in the view taken by the learned trial Judge.

7. For all the aforesaid reasons, the petition is liable to be dismissed and is hereby dismissed. There shall be no order as to costs.

(M.S.SONAK, J.)