

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4960 OF 2019

Udhane Shewale Enterprises and Ors. ...Petitioners
vs.
Laxmi Nnarayan Kharose and Ors. ...Respondents

Mr. Tejas Dande a/w. Mr. Vishal Navale and Mr. Bharat Gadhavi
I/b. Tejas Dande & Associates, for the Petitioners
None for the Respondents

CORAM : M. S. SONAK, J.

DATE : APRIL 18, 2019

P.C.:

- . Heard learned counsel for the parties.
2. The challenge in this Petition is to the order dated 2nd March, 2019 by which the learned trial Judge dismissed the Petitioners' application for discarding the affidavit in lieu of examination in chief filed on behalf of Defendant Nos. 3 to 7 in the suit.
3. Mr. Dande, learned counsel for the Petitioners state that the Defendant Nos. 3 to 7 had filed only one page written statement accepting all that was stated in the Plaint. He therefore submits that there was no reason for these Defendants to file affidavit in lieu of examination in chief. In the alternate, he submits that the statement in the affidavit in lieu of examination in chief can never

travel beyond the pleadings. He submits that the trial in the suit is unnecessarily delayed.

4. The record indicates that the suit is basically a suit for partition. The Petitioners who are Defendant Nos. 8 and 9 have been impleaded in the suit because they claimed to have purchased interest through the Defendants in the suit. It is settled position in law that in suit for partition of parties are in the nature of Plaintiff or Defendants. Taking into consideration this aspect, the learned trial Judge has quite correctly dismissed the Petitioners application for discarding the evidence on behalf of Defendant Nos. 3 to 7.

5. Merely because the impugned order has been made, this will not preclude the Petitioners from, appropriate stage, urging the evidence if the same is really contrary to the pleading is required to be ignored. Similarly, because the impugned order is made, the same will not preclude the Petitioners from raising the objection as to relevancy of the documents at the appropriate stage in the course of the trial. However, it cannot be said the impugned order in excess of jurisdiction so as to warrant interference under Article 227 of the Constitution of India.

6. With the aforesaid reservation and liberty, the present

Petition is dismissed.

7. There shall be no order as to costs.

8. The costs of Rs. 2,000/- ordered earlier, to be paid in favour of Legal Services of Authority.

(M. S. SONAK, J.)