

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8743 OF 2019

Shri Rangrao Vithoba @ Vitthal
Shinde and ors.

.. Petitioners

Vs.

Shri Sukhdeo Vithoba @ Vitthal
Shinde and ors.

.. Respondents

Mr.J.P.Kharge, for the Petitioners.

CORAM : M.S.KARNIK, J.

DATE :04th SEPTEMBER 2019

P.C. :

. Heard learned Counsel for the petitioners.

2. By this Petition, the petitioners – original defendants No. 5 to 8 have challenged the order passed below Exhibit 193 by the trial Court. Vide Exhibit 193, the petitioners prayed that evidence of the defendant No.1 be recorded by Court Commissioner.

3. The plaintiffs filed Suit for partition and separate possession. Original defendants No. 1 to 3, 9 & 12 filed application below Exhibit 193 for recording evidence of the defendant No.1 by Court Commissioner as the defendant No.1 is more than 94 years of age and is not in a position to come to Court and depose.

4. Learned Counsel for the petitioners would submit that in application Exhibit 193 defendants themselves have stated that the defendant No.1 is suffering from memory loss and that his movements have become slow. He further pointed out the averment about the defendant No.1 being not clear in his expressions. For all these reasons, learned Counsel would submit that the trial Court was not justified in refusing the request made by defendants No.5 to 8 for medical examination of defendant No.1 before his evidence is be recorded by the Court Commissioner.

5. By the impugned order, the trial Court has appointed

Court Commissioner to record evidence of defendant No.1. Defendant No.1 is admittedly more than 94 years of age. The trial Court rejected the request made by defendant No.1 to 3, 9 & 12 for medical examination of defendant No.1.

6. I have gone through the order passed by the trial Court. The trial Court has recorded that the defendant can always produce medical certificate of the doctor who is treating defendant No.1 in support of his case that defendant No.1 is not in a fit condition to depose.

7. In this view of the matter, I see no reason to interfere with the order passed by the trial Court. Petition is rejected.

(M.S.KARNIK, J.)