

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11341 OF 2014

Bhausahab @ Bhalchandra L. Tajanpure .. Petitioner
vs.
Smt. Tarabai M. Tajapure and ors. .. Respondents

Mr. Milind M. Sathaye for the Petitioner.
Mr. S.D. Shinde for Respondent No.1.

CORAM : M. S. SONAK, J.
DATE : 05 APRIL 2019.

ORAL JUDGMENT :-

1] Heard Mr. M.M. Sathaye, learned counsel for the petitioner and Mr. S.D. Shinde, learned counsel for respondent No.1.

2] Mr. Sathaye, learned counsel seeks leave to delete respondent Nos.2 to 13 because they were co-defendants in the suit and they are not likely to be affected by the order made in the present petition. Accordingly, leave is granted for deletion . Necessary amendment to be carried out forthwith.

3] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

4] The challenge in the this petition is to the order dated 20th September 2014 by which learned Trial Judge rejected the petitioner's application at Exhibit 190 seeking to examine himself on Court Commissioner.

5] The records indicate that the evidence of the petitioner, who is original defendant No.1, was concluded in March 2010. However, thereafter respondent No.1, i.e., plaintiff amended the suit. Pursuant to the amendment, issues were recasted in September 2014. Mr. Sathaye points out that the re-caste issues place burden of proof upon the petitioner – defendant No.1.

6] In the aforesaid circumstances, opportunity to lead evidence was required to be granted to the petitioner. Learned Trial Judge has merely said that the evidence led earlier covers the recast issues. In such matters, it is for the petitioner (defendnat No.1) to decide whether the evidence is sufficient or not, now that the burden has been casted upon the petitioner in terms of the recast issues.

7] Accordingly, the impugned order is set aside. Learned Trial Judge is directed to appoint a suitable Court Commissioner to examine the petitioner who is stated to be about 90 years old. The Court Commissioner to be appointed within one week from the date the parties filing authenticated copy of this order. The Court Commissioner should be given directions to complete the record of evidence of petitioner as expeditiously as possible and in any case not later than two months from the date of his appointment. The parties to cooperate so that the recording of evidence is unnecessarily delayed. All expenses towards appointment of the Court Commissioner are to be borne by the petitioner alone.

8] Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

9] The interim order granted earlier is vacated.

10] The parties to appear before the learned Trial Judge on 22nd April 2019 at 11.00 a.m. and to file an authenticated copy of this order.

11] Further taking into consideration that the suit itself is of the year 1998, the learned Trial Judge is directed to dispose of the suit within four months from the date of record of evidence of the petitioner is completed.

12] All concerned to act upon an authenticated copy of this order.

(M. S. SONAK, J.)