

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 6678/2018

(SAHEBRAO DEVIDAS WAGHMARE (PATIL) & OTHERS **VERSUS** UMABAI PRALHAD WAGHMARE
(PATIL) & OTHERS)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri N.R. Saboo, counsel for petitioners.
Shri D.L. Dharmadhikari, counsel for R-1 to 5.

CORAM : A.S. CHANDURKAR, J.

DATE : AUGUST 07, 2019.

The challenge raised in the present writ petition is to the order passed by the trial Court below Exhibit 36.

While rejecting that application in which it was prayed that paragraphs 3 and 4 in the affidavit filed on behalf of the plaintiffs in lieu of evidence be deleted on the ground that they were not supported by necessary pleadings, the trial Court has observed that the defendants are free to raise objections to that part of the affidavit which would be considered when the suit would be finally decided.

Shri N.R. Saboo, learned counsel for the petitioners by relying on the decision in Rajendra Singh Chhatrasal Singh Kushwaha Versus Jitendra Singh Rajendra Singh Kushwah & Others [2013(6) Mh.L.J. 802] submitted that on perusal of the plaint in Regular Civil Suit No.100 of 2012 alongwith the affidavit filed in lieu of evidence it could be seen that the contents in paragraphs 3 and 4 of that affidavit were not supported by relevant pleadings in the plaint. The plaintiffs were therefore not liable to rely upon those statements in the affidavit. According to him, in the light of the observations made in the aforesaid decision, the trial Court ought to have allowed the application.

Shri D.L. Dharmadhikari, learned counsel for the respondents supported the impugned order. He submitted that the plaintiffs have been permitted to raise objection to the portion of the affidavit and liberty has been granted to raise the same when the suit is finally decided. Hence no prejudice at this stage is caused to the defendants.

I have perused the plaint as well as the affidavit as filed by the plaintiffs. The trial Court in paragraph 10 of the impugned order has specifically observed that the defendants were at liberty to raise written objections to that portion of the affidavit which according to them was not supported by the pleadings. It has been further observed that the said objections would be considered when the suit is finally decided. Considering these observations in the impugned order, no prejudice is caused to the defendants. Their objection has been kept open and in terms of that order, the trial Court is free to consider the same when the suit is decided. In the nature of the observations as made, the ratio of the decision relied upon by the learned counsel for the petitioner does not apply to the case in hand.

By directing the trial Court to keep in mind its observations made in paragraph 10 of the impugned order when the suit is finally decided, the Writ Petition is dismissed. No costs.

JUDGE