

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.8481/2018

Smt. Gitabai wd/o Niranjan Kotangale

Vs.

Smt.Tulsabai wd/o Mahadeo Kotangale

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri B.L.Meshram, Advocate for petitioner.
Shri N.A. Vyawhare, Advocate for respondent sole.

CORAM : A.S.CHANDURKAR, J.

DATED : June 10, 2019

The orders passed below Exhibits 49 and 56 by the trial Court rejecting the same are under challenge in the present writ petition.

By the application below Exhibit 49, the plaintiff sought to call witness named in the application along with the proceedings dated 30.04.1985 and Resolution No.1376 with regard to the suit plot. This application has been rejected by the trial Court on the ground that the Secretary of the Society had been examined as witness no.3 vide Exhibit 38 and that other witnesses sought to be examined were not mentioned in the list of witnesses. As regards Exhibit 56 is concerned, the prayer made therein was to recall witness no.3 along with the original registers. The trial Court has rejected that application on the ground that no case for recalling that witness was made out.

Shri B.L.Meshram, learned counsel for the petitioner submitted that the trial Court ought to have allowed both the applications. Though the Secretary of the Society was examined as witness no.3, certain documents were not produced by him and for that purpose, the application below Exhibit 49 had been moved. With a view to bring those documents, the said witness was sought to be recalled as per Exhibit 56 in exercise of powers under Order XVIII Rule 17 of the Code of Civil Procedure, 1908 (for short, 'the Code'). Learned counsel relied upon the decision in *Gujarat Urja Vikas Nigam Limited Vs. Solar Semiconductor Power Company (India) Private Limited and Ors. AIR 2017 Supreme Court 5372* in support of his submissions.

On the other hand, Shri N.A.Vyawhare, learned counsel for the sole respondent supported the impugned order. According to him, the plaintiff could not be permitted to fill in the lacunae by moving the aforesaid applications. The Secretary having been examined earlier, there was no ground made out to recall that witness. Similarly, the other witnesses sought to be examined were not named earlier and the trial Court was justified in relying upon the decision in *Anita Sitaram Sawant and Ors. Vs. Gosar Developers and others, 2017(4) Mh.L.J.334* while rejecting the application below Exhibit 49. He also referred to the decision in *Vadiraj Naggappa Vernekar(D) through LRs Vs. Sharad Chand Prabhakar Gogate, 2009(4) SCC 410*.

Heard learned counsel for the parties and perused the deposition of witness no.3 examined by the plaintiff below Exhibit 38. Said witness had stated that he was the representative of the Society in question and he was examined after issuing the witness summons. He had brought the original records pertaining to the petitioner and certain documents were accordingly exhibited. The trial Court having permitted such examination by issuing witness summons, it is found that there is no reason given either in the applications Exhibit 49 or in Exhibit 56 for recalling the said witness. Provisions of Order XVIII Rule 17 of the Code permitting such recall cannot be applied for filling in the lacunae especially when the Court had not found it necessary to seek any clarification in that regard. Similarly, it is found that the trial Court was justified in relying upon the decision of this Court in *Anita Sitaram Sawant* (supra) while rejecting the application below Exhibit 49.

In absence of any jurisdictional error, I do not find any case made out to interfere in writ jurisdiction. Writ Petition is therefore dismissed. No costs.

JUDGE

Andurkar.