

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9042 OF 2021

1. Prakash s/o Baliram Khandare,
Age : 60 years, Occu. Agri. & Business,
R/o M.I.D.C., Osmanabad, Taluka
and District Osmanabad
2. Deelip s/o Baliram Khandare,
Age : 55 years, Occu. Agri. & Business,
R/o M.I.D.C., Osmanabad, Taluka
and District Osmanabad

PETITIONERS
(Orig. Defendants)

VERSUS

Rahul s/o Bhaskarrao Rankhamb,
Age : 40 years, Occu. Service & Agri.,
R/o Bank Colony, Osmanabad,
through his Gen. Power of Attorney
Suresh s/o Nivrutti Rankhamb,
Age : 55 years, Occu. Agri.,
R/o Village Kumalwadi, Taluka
and District Osmanabad

RESPONDENT
(Orig. Plaintiff)

Mr. Babasaheb A. Dhengle, Advocate for the petitioners
Mr. Prasanna S. Chavan, Advocate for the respondent

CORAM : MANGESH S. PATIL, J.

DATE : 01.09.2021

ORAL JUDGMENT :

Heard.

2. Rule. The Rule is made returnable forthwith. With the consent

of learned Advocates for the parties, the matter is heard finally at the stage of admission.

3. The respondent, who is the original plaintiff, has filed a suit for possession by removing encroachment allegedly made by the petitioners. It appears that during the course of the trial, the petitioners failed to cross-examine the respondent's witnesses. An order was passed to the effect that there would be no cross-examination of the witnesses on behalf of the petitioners. Subsequently, by the order dated 26.09.2019, the petitioners were allowed to cross-examine the respondent's witnesses subject to payment of costs of Rs.1500/-. However, the costs were not paid and again the learned Judge had to record that there would be no cross-examination on behalf of the petitioners. That order was sought to be set aside by moving an application (Exh-41), but that has been rejected by the impugned order.

4. The learned Advocate for the petitioners submits that no adjournment would be sought for cross-examination of the respondent's witnesses if a specific date is fixed and even the petitioners are ready to pay the costs imposed earlier as well as ready to bear the additional costs.

5. Considering the nature of the dispute coupled with the fact that in spite of availing one opportunity at an earlier point of time, the petitioners had failed to avail it by paying necessary costs and this is a second round wherein the Court has been called upon to again permit them to cross-

examine the respondent's witnesses, the Writ Petition is allowed. The impugned order is quashed and set aside; however subject to payment of costs of Rs.10,000/- (Rupees Ten Thousand) in addition to the earlier costs of Rs.1500/-, to be deposited in the Trial Court within two weeks from today. The respondent shall be entitled to withdraw the costs.

6. The parties shall appear before the Trial Court on 16.09.2021. The respondent shall keep all his witnesses present before the Trial Court on that day and the petitioners shall cross-examine those witnesses on the very day and the Trial Court shall not grant any adjournment.

7. The Rule is made absolute accordingly.

[MANGESH S. PATIL]
JUDGE