

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12772 OF 2021

Kiran Laxminarayan Mantri,
Age : 45 years, Occu. Agril and
Business, R/o Moti Nagar,
Latur, Tq. and Dist. Latur

PETITIONER
(Orig. Plaintiff)

VERSUS

Phulabai Vijaykumar Mitkari
(Died through L.Rs.)

1. Virendra Vijaykumar Mitkari,
Age : 43 years, Occu. Agri.
2. Dhananjay Vijaykumar Mitkari,
Age : 41 years, Occu. Agri.
3. Mitravanda Vijaykumar Mitkari,
Age : 45 years, Occu. Household,

All r/o Budhoda, Taluka Ausa,
District Latur

RESPONDENTS
(Orig. Defendants)

.....
Mr. R.P. Adgaonkar, Advocate for the petitioner
Mr. Vivek Bhavthankar, Advocate for the respondents
.....

CORAM : MANGESH S. PATIL, J.

DATE : 25.11.2021

ORAL JUDGMENT :

Heard.

2. Rule. The Rule is made returnable forthwith. Learned
Advocate Mr. Vivek Bhavthankar waives service for the respondents. At the

joint request of the parties, the matter is heard finally at the stage of admission.

3. The petitioner, who is the original plaintiff, is aggrieved by the rejection of application (Exh-88) whereby his request seeking permission to cross-examine the respondents/defendants' witness has been rejected by noting his previous conduct in not conducting cross-examination inspite of the earlier order whereby he was permitted to cross-examine the witness by imposing costs of Rs.1500/-.

4. The parties are unanimous that previously also the petitioner had failed to promptly cross-examine the witness of the respondents and was imposed with cost which he deposited but failed to cross-examine the witness.

5. It is a suit for perpetual injunction whereby the petitioner is seeking to protect his possession. Taking note of the previous conduct of the petitioner and the reasoning given by the learned Judge of the trial court while passing the impugned order, in my considered view, it would be appropriate and in the interest of justice to grant one more opportunity to the petitioner by imposing heavy costs and by further directing him to cross-examine the respondents' witness on a specific date as a condition precedent for allowing the writ petition.

6. The Writ Petition is allowed. The impugned order is quashed

and set aside, subject to the following conditions:

- (a) The petitioner shall deposit costs of Rs.5000/- in the trial court on or before 07.12.2021.
 - (b) The respondents shall keep their witness present on 07.12.2021 and on which day, the petitioner shall cross-examine the witness without seeking any adjournment. The trial court shall not grant any adjournment to the petitioner on that day.
 - (c) On failure to obey any of the aforementioned conditions, this order shall stand recalled automatically without reference to the Court.
7. Inform the trial court immediately by mail.
8. The Rule is made absolute in above terms.

[MANGESH S. PATIL]
JUDGE