

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

992 WRIT PETITION NO.2271 OF 2005

SAHEBRAO KADUBA CHAVAN
VERSUS
GHANSHAMDAS RAMNATH KABRA

...

Advocate for Petitioner : Mr Rajendra S. Deshmukh, Senior Counsel
Advocate for Respondent sole : Mr Y.G. Somani

CORAM : SANDEEP V. MARNE, J.

DATE : 16th NOVEMBER, 2022

PER COURT :

1. The writ petition is filed assailing the order dated 18.02.2005 passed by the Civil Judge, Junior Division, Jafrabad on application below Exh. 76. The application was filed by the plaintiff seeking examination of advocate Mr P.L. Kabra, the attesting witness to the sale deed as a witness. It appears that the other attesting witness to the sale deed Dadarao Sawade was already examined by the defendant as his witness. The only the ground for opposing the application of the plaintiff by the defendant was that during his cross-examination, the plaintiff had clearly expressed his desire not to examine advocate P.L. Kabra or the other attesting witness Dadarao Sawade as his witnesses.

2. The trial court has recorded finding that even after examination of the other attesting witness Dadarao Sawade by the defendant, the nature of transaction has not come on record in his deposition. In that view of the matter, the trial court has allowed the application of the plaintiff, who is permitted to examine the attesting witness to the sale deed, Advocate

Kabra. I do not find any infirmity committed by the trial court in allowing the application by the plaintiff. The nature of sale deed is in dispute between the parties. One of the attesting witnesses is already examined by the defendant. It is, therefore, necessary to examine the second attesting witness. Merely because the plaintiff, one of witnesses, expressed his desire not to examine Advocate P.L. Kabra as witness, the same could not have been a ground for rejecting plaintiff's application. No error is committed by the trial court in allowing the application.

3 Needless to state that if the plaintiff examines the witness, the defendants shall have right to have his cross-examination.

4. The petition is devoid of merits. Hence, the petition is dismissed with no order as to costs.

5. The suit is of the year 2000. While hearing the present petition, this Court had stayed the impugned order dated 18.02.2005. However, it was specifically clarified that there was no stay to the hearing on the suit. It appears that because the order dated 18.02.2005 was stayed, the plaintiff has not proceeded further in the suit. In that view of the matter, the hearing of the suit is expedited and the trial court is requested to make an endeavour to dispose of the suit as early as possible preferably within a period of six months from today.

[SANDEEP V. MARNE, J.]

mta