

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

941 WRIT PETITION NO.959 OF 2019

NAVNATH LAXMAN LADHANE THROUGH GPA SHARAD
NAVNATH LADHANE
VERSUS
JAGANNATH LAXMAN LADHANE AND OTHERS

...

Advocate for Petitioner : Mr. Latange V.P.
Mr. Patil-Indrale Anand V., Advocate for R-9
Resp. Nos.3 To 8, 10 To 12, 14 to 22, 24 To 29 are Served

**CORAM : PRITHVIRAJ K.CHAVAN , J.
DATE : 9th MARCH, 2022.**

PER COURT :-

1. The only point in this petition is, as to whether in a suit for partition and separate possession, where the evidence of the plaintiff had already begun and had gone to the extent of his cross-examination by the defendant, can now be permitted to substitute his son on the ground that the plaintiff is now grown old and is unable to attend the Court ?

2. The answer has to be emphatically in the negative for the reason that no such procedure is contemplated under the Code of Civil Procedure. The plaintiff can very well resort to the provisions of Order XVIII Rule 4 sub-rule (3) and (4) of the Code of Civil Procedure for that purpose, which contemplates that the evidence of a

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witness can also be recorded by appointing a Commissioner, who is authorized to record the evidence in writing or mechanically in the presence of the Judge or of the Commissioner as well as he can also record remarks as regards the demeanour of any witness.

3. At this stage, learned Counsel for the petitioner-original plaintiff fairly submits that the plaintiff would again appear in the Court for completion of his cross-examination. The statement is accepted.

4. In that view of the matter, following order is expedient, -

ORDER

i. The impugned order dated 6th October, 2018 is quashed and set aside;

ii. The petitioner/plaintiff – Navnath Laxman Ladhane shall appear before learned Civil Judge, Junior Division, Karjat District Ahmednagar on 28th March, 2022 at 11.00 a.m.

iii. Upon his appearance, the learned Judge shall record his evidence from the point it was left, i.e. permit the learned counsel for the

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defendant to further cross-examine Navnath Laxman Ladhane.

iv. The Court shall make an endeavour to complete the cross-examination and re-examination, if any, of the plaintiff on the same day.

5. The petition stands disposed of in aforesaid terms.

6. The parties to act on the basis of authenticated copy of this order.

(PRITHVIRAJ K.CHAVAN, J.)

BDV