

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

905 WRIT PETITION NO.13091 OF 2022

**VISHWANATH LAXMAN BULKUNDE AND ANOTHER
VERSUS
LAXMAN BAHIRU BALKUNDE DECEASED AND ANOTHER**

...
Advocate for Petitioners : Mr. Ankush N. Nagargoje

...
CORAM : SANDEEP V. MARNE, J.

DATE : 21-12-2022

PER COURT :

. This writ petition is filed challenging the order dated 16.11.2022 passed by the 2nd Jt. Civil Judge Senior Division, Sangamner below Exh.42 in Regular Civil Suit No.66 of 2012 rejecting the application of petitioners / plaintiffs for grant of opportunity to lead evidence.

2. Plaintiffs have already adduced their evidence and on account of absence of defendants, 'no cross' order has been passed against defendants on 07.07.2022. The said order has remained unchallenged and has attained finality. On account of petitioners / plaintiffs' failure to give list of witnesses, their evidence was closed on 09.11.2022. The application filed by them for grant of opportunity to lead evidence is rejected essentially on account of their failure to indicate the witnesses, which they intend to examine.

3. Mr. Nagargoje, the learned counsel for petitioners / plaintiffs submits that they desire to examine the Sub-registrar Assurances, in whose office Gift Deed has been registered. This is the only one additional witness to whom plaintiffs desire to examine.

4. Considering the fact that 'no cross' order is already passed against defendants in respect of the evidence of plaintiffs, notice in the present petition need not be served on defendants.

5. In view of above, the following order is passed.

ORDER

- (i) The writ petition is allowed.
- (ii) The order dated 16.11.2022 passed by the 2nd Jt. Civil Judge Senior Division, Sangamner is set aside.
- (iii) Petitioners / plaintiffs shall be at liberty to examine Sub-registrar of Assurances as their witness on or before 28.02.2023. In the event of failure on the part of plaintiffs to lead evidence of Sub-registrar of Assurances within the stipulated time, their evidence shall be deemed to be closed.
- (iv) Needless to say that defendants will have an opportunity

to cross examine the said witness examined by plaintiffs.

(v) Plaintiffs to appear before the trial Court on 03.01.2023 which is the next date of hearing and apply for issuance of summons to witness i.e. Sub-Registrar of Assurances.

(SANDEEP V. MARNE, J.)

GGP