

ISM

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 4293 OF 2018

SHRI. SANJAY JAYPAL SHIRDHONE PETITIONERS
AND ORS

V/s.

SHRI. CHANDAKKA @ CHANDAVA RESPONDENTS
JAYPAL SHIRDHONE

Mr. Vijay Killedar Advocate for the Petitioners

CORAM : NITIN W. SAMBRE, J.

DATE: FEBRUARY 17, 2022.

P.C.:

1) In a Suit for partition, Plaintiff filed her examination-in-chief at Exh. 41/C through her Power of Attorney Ajit Bhupal Sajane. Power of Attorney since was cancelled, discharge of the said Attorney was allowed on 29/07/2016.

2) One Babitai Tatyasaheb Madbhave who happened to be niece of the Plaintiff preferred affidavit in the form of examination-in-chief on behalf of Plaintiff as her Attorney. I am informed that said affidavit of

examination-in-chief is still on record and not discarded.

3) Without cancelling Power of Attorney in favour of said witness, Respondent-Plaintiff took out another affidavit of examination-in-chief through one Baby Rajkumar Naik who alleged to be grand daughter of Plaintiff.

4) Without discarding earlier affidavit, vide impugned order, in the interest of justice, Plaintiff was permitted to place on record said affidavit of examination-in-chief by the Trial Court. Same is objected by the Petitioner vide Application Exh. 51 which is rejected vide impugned order dated 15/12/2017.

5) Counsel for the Petitioner would urge that Plaintiff has successfully avoided to personally appear and enter into witness box in the said proceedings. It is claimed that time and again she has given Power of Attorney in favour of various persons. Such person i.e. Power of Attorney can depose to the extent of his personal knowledge about the suit claim and not otherwise. As such, according to him, Plaintiff has placed on record two affidavits of evidence through two different Attorneys as referred above which is not permissible in law. According to him, unless earlier Attorneys who are permitted to lead

evidence are discharged by the Court, new Attorney ought not to have been permitted to lead the evidence on behalf of the Plaintiff.

6) He would claim that his objection to that effect is overruled by the Court below.

7) I have considered said submissions.

8) Though served none appears for Plaintiff.

9) It is brought to my notice that unless the affidavit of evidence of Attorney on behalf of the Petitioner namely Babitai Tatyasaheb Madbhave is discharged, Respondent-Plaintiff cannot be permitted to place on record affidavit of examination-in-chief through another Attorney.

10) In that view of the matter, in my opinion, order impugned dated 15/12/2017 is set aside. The Trial Court is directed to pass appropriate order on Exhibit 60 keeping in mind the observations made herein above.

11) Petition stands partly allowed in the above terms.

[NITIN W. SAMBRE, J.]