

Diksha Rane

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3675 OF 2022

SUDHAKAR SHAMRAO PATIL

..PETITIONER

VS.

SHRINIWAS SUDHAKAR PATIL & ORS.

..RESPONDENTS

Mr. Shriram S. Chaudhari for the petitioner.

CORAM : M. S. KARNIK, J.

DATE : JULY 21, 2022.

P.C. :

1. The petition is filed by the original defendant no.4 (the respondent no.4 before the Appellate Court) challenging an order dated December 23, 2021 passed by the District Judge-2, Barshi. By the impugned order, an application made by the petitioner under Order XLI Rule 27 of the Code of Civil Procedure for allowing the petitioner (original respondent no.4 in appeal) to lead additional evidence is rejected.

2. The petitioner is the father of the plaintiff. The plaintiff had instituted a suit for partition and separate possession claiming that the property is a joint family property of the parties to the suit. The petitioner was impleaded as the defendant no.4. The petitioner admitted the claim of the plaintiff in the written statement which was filed by him

before the trial Court at Exhibit 36. The petitioner preferred not to cross-examine the witnesses (PW-2, PW-3 and PW-4). He was absent for cross-examination of PW-4 and PW-5. According to learned counsel for the petitioner, the petitioner was not keeping good health and was not aware of the proceedings before the trial Court. In the result, he could not effectively contest the suit and lead the evidence.

3. I have gone through the impugned order. I see no reason to interfere with the impugned order. The petitioner admitted the claim of the plaintiff by filing written statement at Exhibit 36. He was duly represented by a lawyer. The witnesses were offered for cross-examination but the petitioner chose not to examine the witnesses. The petitioner did not lead any evidence either oral or documentary. In such circumstances, I see no reason to entertain the request made by learned counsel for the petitioner that in the interest of justice, the petitioner be allowed to produce additional evidence. Consequently, the writ petition stands rejected.

(M.S.KARNIK, J.)