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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10508 OF 2022

Ashok Mahadev Pakhare

.. Petitioner

Versus

Jalindar Baburao Patil

.. Respondent

.....

Ms. Divya A. Pawar, Advocate for the Petitioner.

Mr. Om Latpate i/by Mr. Kuldeep V. Nikam, Advocate for the Respondent.

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CORAM : MILIND N. JADHAV, J.

DATE : 21st November, 2022

P.C.:

. By the present Writ Petition, Petitioner is challenging the Judgment and Order dated 04.08.2022 passed by the learned Civil Judge Junior Division, Vita, District Sangli below Exh.95 in Regular Civil Suit No.566 of 2020 whereby the Application below Exh.95 preferred by Petitioner under the provisions of Order 18 Rule 17 of the Code of Civil Procedure, 1908 (for short “**CPC**”) was rejected by the learned 3rd Joint Civil Judge Junior Division, Vita, District Sangli.

2. Petitioner is original Defendant. Respondent is original Plaintiff. They shall be referred to as Plaintiff and Defendant for convenience.

3. Plaintiff filed suit for perpetual injunction to restrain Defendant from interfering with and disturbing his possession of the

suit property. According to Plaintiff, Defendant was attempting to take possession of the suit property. Trial proceeded before the Trial Court. Witness action was completed. Matter was posted for final arguments.

4. Thereafter Defendant changed his Advocate. The new Advocate after perusing the record informed Defendant that questions with respect to City Survey Scheme and CTS Nos.207 and 301 were not put to the Plaintiff's witness in cross-examination. Hence, Defendant filed Application under Order 18 Rule 17 seeking a direction to recall Plaintiff's witness No.1. This Application was resisted by Plaintiff on the ground that failing to ask the questions regarding the scheme and CS Numbers with reference to the suit property cannot be attributed to oversight or mistake as pleaded by Defendant.

5. I have heard Ms. Pawar, learned Advocate appearing for Petitioner (Defendant) and have perused the impugned order passed by the Trial Court below Exh.95. Record indicates that substantial time and opportunity was granted to the Defendant to cross examine Plaintiff's witness from 25.03.2021 to 04.10.2021. Thus adequate opportunity and time was given to the Defendant to cross examine Plaintiff's witness. Perusal of the impugned order further reveals that in cross examination of Plaintiff's witness and more particularly in para Nos.8 and 15 of the cross-examination, questions have been specifically put to the Plaintiff's witness pertaining to the City Survey

Scheme and the concerned CS Numbers. I have also perused the cross-examination of Plaintiff's witness, viz, para No.8 (at page No.33), para No.12 (at page Nos.32 / 33) and para No.15 (at page Nos.36 / 37) which is annexed to the Petition. This cross-examination was conducted on 25.03.2021, 05.04.2021 and 04.10.2021 respectively. It is seen that on the aforementioned 3 dates specific questions have been put to the witness with respect to the disputed CS Numbers, viz, CS Nos.207 and 301 and the Scheme.

6. In view of the above discussion and finding, the Application by Defendant i.e. Exh.95 filed on the ground stated therein was therefore clearly not maintainable. The learned Trial Court has correctly appreciated the issue and passed a reasoned order below Exh. 95. The order dated 04.08.2022 is sustained.

7. In view of expedition of the suit directed by the District Court at Sangli, in the event if the subject suit is still pending hearing and decision, the learned Trial Court is directed to decide the same within a period of 4 weeks from the date of uploading of this order. Registrar (Judicial) of this Court is directed to convey a copy of this order to the learned Trial Court for compliance.

8. With the above directions, Writ Petition is dismissed.

[MILIND N. JADHAV, J.]