

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

934 WRIT PETITION NO.348 OF 2022

RANGNATH PATILBA PACHPUTE THROUGH GPA HOLDER
SUSHIL RANGNATH PACHPUTE
VERSUS
MACHHINDRA GANPAT PACHPUTE SINCE DECEASED THROUGH
LRSBEBI MACHHINDRA PACHPUTE AND ANOTHER

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Mr. Rahul R. Karpe, Advocate for the Petitioner.
Mr. D.B. Rode, Advocate for Respondent No.2.

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CORAM : SHARMILA U. DESHMUKH, J.
DATED : JANUARY 07, 2023.

PER COURT :

1. Heard.
2. By this petition, the Petitioner impugns the order dated 20th December, 2021 passed below Exh.82 in Regular Civil Suit No.271 of 2013, whereby the application filed by the Petitioner to set aside the evidence closed order and permission to lead further evidence has been rejected.
3. Learned counsel appearing for the Petitioner submits that the Petitioner, who is the plaintiff, has examined two witnesses in the month of June, 2018 and also desires to examine the Measurement Officer, who is a necessary witness as the suit seeks removal of the encroachment and the evidence of measurement

officer is necessary to decide the controversy involved.

4. *Per contra*, learned counsel appearing for the Respondents vehemently opposed the application and submits that once the evidence close pursis has been filed, by taking recourse to inherent powers under Section 154, the Petitioner cannot be permitted to lead further evidence. In support of his contention, he relies upon the decision of the Apex Court in the case of ***Bagai Construction through its Proprietor Lalit Bagai Vs. Gupta Building Material Store***, reported in (2013) 14 SCC 1.

5. I have considered rival submissions of the parties. The application for further evidence was filed and the first application for examining one more witness was filed on 7th July, 2018, immediately after the examination of the witnesses by the Petitioner on 26th June, 2018. The said application was not pressed and second application came to be filed on 18th August, 2018, reiterating the same request for examining the Measurement Officer as a witness. Be that as it may, the case of the Petitioner is that due to some dispute/miscommunication between the Petitioner and his counsel, without consulting the Petitioner, evidence close pursis filed by the Petitioner. Further no evidence has been lead by the defendants/respondents and the evidence close pursis has also been filed by the defendants.

6. The decision of the Apex Court relied upon by the learned counsel for the Respondents is distinguishable on facts,

inasmuch as in that case, the final arguments were heard on number of occasions and the judgment was reserved and only thereafter, in order to overcome the lacuna in the evidence, the plaintiff therein had sought an application for recalling all the witnesses under Order XVIII Rule 15.

7. In the present case, immediately upon examination of the witnesses on 26th June, 2018, an application has been moved for examining the measurement officer. It is not disputed by the learned counsel for the Respondents that the measurement officer is a necessary witness in view of the fact that the suit is for removal of the encroachment. In my opinion, the said witness i.e. Measurement Officer would assist the Court in deciding the controversy in question. In view thereof, in the interest of justice the Petitioner is required to be permitted to be examined the measurement officer, subject to payment of costs. Hence, the following order:

ORDER

(i) The order dated 20th December, 2021 is hereby quashed and set aside.

(ii) The witness proposed is to be examined by the Petitioner on 15th February, 2023, with a liberty to the Respondents to cross-examine the said witnesses.

(iii) The Petitioner to pay costs of Rs.5000/- to the Respondents.

(iv) The Writ Petition is accordingly disposed of in the above terms.

(SHARMILA U. DESHMUKH, J.)