

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.3625 OF 2022**

**UTTAM MARUTI VAYASE AND OTHERS
VERSUS
THE COLLECTOR OSMANABAD THROUGH THE DISTRICT
INSPECTOR AND OTHERS**

...
Mr. Bhagwan S. Kudale, Advocate for the Petitioners.
Mrs. G. L. Deshpande, AGP for Respondents-State.

...
**CORAM : SHARMILA U. DESHMUKH, J.
DATED : 09th JANUARY, 2023.**

PER COURT:-

1. Heard the learned counsel appearing for the petitioners.
2. The petitioners are aggrieved by the orders below Exhibit-84 and Exhibit-95 passed in RCS No.01/2015. The petitioner is the original plaintiff seeking partition and separate possession of the suit properties.
3. An application came to be submitted by the petitioner no 1 to the Deputy Superintendent of the Land Records for fixing the boundaries as per the compromise entered into between the petitioners and the respondents in RCS No.49/1986 and in RCS No.01/2015 the petitioner sought to examine the Surveyor, who had carried out the measurement and the evidence of the Surveyor was recorded. Subsequently, by an application below Exhibit-84 the petitioners sought to recall the witness Shri. Sunil Narayan More i.e. Surveyor for recording examination-in-chief as well as further cross-examination, as according to the petitioners the evidence given by the Surveyor Shri. Sunil More was favouring the defendants. The application for recall was witness

stated that the application was filed under the provisions of Order XVIII Rule 17 of the Code of Civil Procedure. By the impugned order dated 04.01.2021, the application filed below Exhibit-84 was rejected by the Trial Court on two grounds, firstly, that the provision under which the application was filed i.e. Order XVIII Rule 17 does not exist on the statute book after the amendment of the year 2002 and secondly, on the ground that in the evidence of the witness certain admissions have been given, which cannot be permitted to be clarified by recalling the witness.

4. As far as the application under Exhibit-95 is concerned, the same was filed by the petitioners seeking to examine the Deputy Superintendent of Land Records, who was also a signatory to the same measurement in respect of which the Shri. Sunil Narayan More was already examined. The application below Exhibit-95 was rejected by the Trial Court on the ground that since the application under Exhibit-84 has already been rejected by the Trial Court, for the same purpose of seeking clarification in respect of the same measurement the Deputy Superintendent of the Land Records who is a joint signatory to the report cannot be permitted to be examined.

5. I have considered the submissions of the learned counsel for the petitioners.

6. As regards the order passed below Exhibit-84 is concerned, the observation of the Trial Court that the provisions of Order XVIII Rule 17 does not exist under the statute book is erroneous. However, a perusal of the Order XVIII Rule 17 shows that the said provision enables the Court to recall any witness who has been examined and Court may put such questions to him

as the Court thinks fit and as such, in my view, the provision deals with the exercise of suo moto powers by the Court and the petitioners cannot take benefit of the said provision by filing an application for recall of the witness.

7. The Petitioner seeks to record the examination in chief and cross examination afresh of the surveyor Shri Sunil Narayan More and in my opinion, the admission which has been given by the witness cannot be sought to be washed away under the guise of recalling the witness.

8. I do not find any infirmity in the order passed below Exhibit-84 by the Trial Court, as the said Surveyor was petitioners' own witness who had been examined and cross-examined and there is no provision under which fresh examination-in-chief and cross-examination of the same witness can be permitted only on the ground that certain adverse deposition has been made by the said witness.

9. As far as the order passed below Exhibit-95 is concerned, since the land was measured jointly by the Surveyor and whose evidence has already been recorded and is placed on record, there is no necessity to examine the Deputy Superintendent of Land Record, who was joint signatory to the report. The purpose appears to be to set at naught the admissions given by the Surveyor Shri Sunil Narayan More.

10. As such, the writ petition is devoid of merits and is accordingly dismissed.

(SHARMILA U. DESHMUKH)
JUDGE