

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

WRIT PETITION NO. 1806 OF 2021

Dadasaheb s/o Rama Khod & Ors.

...Petitioners

Versus

Rama s/o Bhima Khod & Ors.

...Respondents

....

Mr. S. S. Kazi – Advocate for the petitioners

Mr. Y. K. Bobade – Advocate for respondent nos. 3A to 3C

....

CORAM : NITIN B. SURYAWANSHI, J.

DATE : MARCH 30, 2023

PER COURT : -

1. The petitioners/plaintiffs are aggrieved by the order passed below Exhibit – 70 by the learned 2nd Joint Civil Judge Senior Division, Beed, in Regular Civil Suit No. 17 of 2011.

2. The petitioners filed suit for partition and separate possession of the ancestral property. After the plaintiffs examined their witness no. 1, evidence affidavit of their witness Ganesh Khade was filed. Thereafter, application Exhibit – 70 was filed by the plaintiffs contending that Ganesh Khade has gone out of state for sugarcane cutting work, therefore he is not available for cross-examination. The plaintiffs, therefore, sought permission to examine another witness in his place. The said application is rejected by the Trial Court on the ground that it is not supported by affidavit as per Order VI Rule 15 of the Code of Civil Procedure and the Trial Court held that the cause shown by the plaintiffs for sgp

dropping the evidence of Ganesh Khade is not justified. The Trial Court observed that the plaintiffs are trying to prolong the matter unnecessarily.

3. The learned counsel for the respondents supported the impugned order.

4. Having heard the learned counsel for the petitioners and respondents and on perusal of the record and the orders impugned in the present petition, I am of the view that the impugned order is unsustainable since it is passed in defiance of principles of natural justice.

5. The reason assigned by the plaintiff that their witness has gone out of state for sugarcane cutting work is plausible and acceptable. The Trial Court has adopted a hyper-technical approach in holding that the said reason is not justified.

6. The Supreme Court, in the case of **"M/s R. N. Jadi & Brothers V/s Subhashchandra"** AIR 2007 SC 2571, has held -

"All the rules of procedure are the handmaid of justice. The language employed by the draftsman of procedural law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of the CPC or any other procedural enactment ought not to be construed in a manner which would leave the Court

helpless to meet extraordinary situations in the ends of justice."

"Procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice."

7. In view of aforesaid ratio and since the impugned order denies fair opportunity to the plaintiffs to lead best possible evidence in support of their case, the same cannot be sustained.

8. In the result, the writ petition is allowed. The impugned order dated 03.01.2020 below Exhibit – 70 passed by the 2nd Joint Civil Judge Senior Division, Beed in Regular Civil Suit No. 17 of 2011 is quashed and set aside. Application [Exhibit – 70] is allowed.

[NITIN B. SURYAWANSHI]
JUDGE