

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

WRIT PETITION NO.8143 OF 2023

**SUBHASH GANGADHARPRASAD PANDE DIED THROUGH LRS REKHA
SUBHASH PANDE AND OTHERS**

VERSUS

**GANGADHARPRASAD NARSINGHPRASAD PANDE DIED THROUGH
LRS SATYAWATI AVINASH AWASTHI DIED AND OTHERS**

...

Advocate for Petitioners : Mr. Suhas P. Urgunde

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 25th JULY, 2023

PER COURT :

1. Petitioner is aggrieved by the order dated 01/02/2023, passed by learned 4th Joint Civil Judge, Senior Division, Latur, below Exhibit-282, in Regular Civil Suit No.67/2012, thereby rejecting application filed by the petitioner/plaintiff under Order 16 Rule 2 of the Code of Civil Procedure, for obtaining witness summons against the advocate of adverse party i.e. defendant No.3.

2. Petitioner/plaintiff filed the suit for partition and separate possession. There is a pleading in the plaint for partition of joint family properties. The family arrangement was made on 15/12/1996, on stamp paper and partition of joint family properties was effected. The said document was scribed by Rajendra Kale, Assistant of Advocate Mr. Venkat Bedre. Advocate Mr. Venkat Bedre has signed the said document as witness along with another

witnesses namely Chandrashekar Bajpai, who belongs to the community of plaintiff and defendants. This document is also signed by plaintiff and defendant Nos.1 to 3. By filing written statement defendant No.3 denied execution of the said document.

3. Plaintiff by filing application Exhibit-282 requested for issuance of witness summons to advocate Mr. V. B. Bedre to prove the said document. Defendants opposed the application on the ground that advocate Mr. V. B. Bedre is representing defendant No.3, who has denied execution of the said document and advocate of adverse party cannot be called as witness. Trial Court rejected the application. Hence the present petition.

4. Heard learned advocate for petitioners. Perused the memo of writ petition, annexures thereto and the impugned order.

5. It is settled legal position that advocate of adverse party cannot be called as witnesses. Execution of the said document on which advocate Mr. V. B. Bedre has signed as witness, is specifically denied by defendant No.3. On this information given by defendant No.3, his written statement is prepared by advocate Mr. V. B. Bedre. Considering this aspect, Trial Court has rightly held that it is the duty of advocate to uphold interest of his client and therefore, advocate Mr. V. B. Bedre cannot be allowed to appear as witness against the interest of his own client.

6. Trial Court has rightly relied on *R. K. Agarwal Vs. Rana Harishchandra Ranjitsingh and Others, AIR 1994 Bombay 117*, wherein it is held that advocate having knowledge that he is likely to be cited as material witness at the trial electing to appear as Advocate in the case, cannot be permitted to be examined as witness by retiring from the suit at a subsequent stage. However, exception is when the advocate is called to be a Court witness or when he is a formal witness.

7. Trial Court has passed well reasoned order. There is no illegality or perversity in the order passed by the Trial Court. No case is made out by the petitioner to interfere in exercise of extraordinary writ jurisdiction. Writ petition being devoid of merit is dismissed.

(NITIN B. SURYAWANSHI, J.)