

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5446 OF 2015

Bhagwan Devrao Kadam
and others

.... Petitioners

Versus

Mallikarjun Satyanaappa Kalshettei
and others

.... Respondents

.....

Mr. S.S. Jangada, Advocate h/f Mr. Sachin Deshmukh,
Advocate for the Petitioners

Mr. S.J. Salunke, Advocate for Respondent No.2

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 12th APRIL, 2023

ORDER :

1. The petitioners are aggrieved by the order passed by the learned Civil Judge, Senior Division, Ambajogai, below Exhibit-80/C in Regular Civil Suit No.211 of 2004, there by rejecting the application filed by the petitioner for recording the entire answer given by the petitioner No.1/plaintiff No.1 in cross-examination.

2. The petitioners/plaintiffs have filed the suit for declaration and injunction. During the cross-examination of petitioner No.1/plaintiff No.1, following question was asked to him, "whether the disputed road has been constructed in cement concrete". He answered, 'No'. The same is recorded in the cross-examination.

3. By application Exhibit-80/C, petitioner No.1/plaintiff No.1 submitted that to the said question he has given answer 'No' (he volunteered that the road was not cement concreted as it was disputed). In the said application, he requested the trial Court to record the voluntary part of his answer. The said application is rejected. Hence, the present petition.

4. Heard the learned advocate for the petitioners and the learned advocate for respondent No.2. Perused the grounds raised in the petition, annexures and the impugned order.

5. It is not in dispute that the suit is at the stage of recording of evidence, and since the year 2014, stay is operating in favour of the petitioners.

6. The trial Court has observed that to the question asked to the petitioner no.1/plaintiff No.1, he answered in negative, and that answer is recorded. He was not asked the reason as to why the road was not constructed in cement concrete. Since the answer given by the petitioner No.1/plaintiff No.1 to the question asked is recorded, it is not necessary to record the explanation of the petitioner.

7. The trial Court has adopted a correct approach, and there is no illegality or perversity in the order impugned in the petition. The trial Court is justified in passing the impugned order. No case is made out by the petitioners to interfere in the extraordinary writ jurisdiction.

8. Writ Petition being devoid of merit is dismissed.

9. Interim relief stands vacated.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane