

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.15932 OF 2022

VAIBHAV
RAMESH
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Namdev Ramchandra Patil Through His
Power of Attorney Holder Arvind
Namdev Patil

... Petitioner

V/s.

Namdev Maruti Patil & Ors.

... Respondents

Mr. Manish Khadakban i/by Mr. Mithun Mahajan for
the petitioner.

Mr. Nikhil N. Pawar for the respondents.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 4, 2023

P.C.:

1. The petitioner is original plaintiff who filed suit for declaration and injunction. The declaration is in respect of suit properties to be declared as ancestral properties and in relation to order passed by defendant No.20. Consequential injunction not to disturb plaintiff's possession over the suit property is also sought.

2. The plaintiff led his evidence in support of his case, however, on 21st April 2022, he filed an application below Exhibit-130 seeking adjournment to adduce evidence as according to the petitioner his witness was having symptoms of COVID-19 pandemic.

3. The Trial Court rejected the application and passed order of no evidence against the petitioner.
4. The petitioner, therefore, on 21st July 2022 filed an application for recall of order of no evidence. The Trial Court, by order dated 11th August 2022, rejected the application. Hence, present writ petition.
5. Considering the relief prayed and the petitioner is original plaintiff, no prejudice would be caused to the defendants if the petitioner is given opportunity to lead further evidence. The reason mentioned in the application dated 21st April 2022 cannot be termed as unjustified cause for seeking adjournment. Considering the prevalent situation, such reason was plausible. Hence, in my opinion, in the interest of justice the party should not be shut out from leading evidence in support of his case particularly when such application is filed by the plaintiff.
6. Hence, following order:
 - a) The impugned order dated 11th August 2022 passed by the Civil Judge, Junior Division, Islampur in Regular Civil Suit No.549 of 2015 below Exhibit-132 is quashed and set aside.
 - b) The application below Exhibit-132 in Regular Civil Suit No.549 of 2015 is allowed.
7. The writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)