

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.14038 OF 2022

Ashabai Gangadhar Gulve and Ors.

.. Petitioners

Versus

Gururling Virupaksh Gulve (since deceased)
through legal heirs Usha Guruling Gulve and
Ors.

.. Respondents

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- Mr. Surel S. Shah a/w. Mr. Rahul P. Kasbekar, Advocates for Petitioners.
- Mr. B. A. Lawate, Advocate for Respondent Nos.1(b), 2(a) to (f) and 3.
- Mr. P. P. Pujari, APP for Respondent Nos.5 and 6.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 09, 2024

P.C.:

1. Heard Mr. Shah, learned Advocate for Petitioners, Mr. Lawate, learned Advocate for Respondent Nos.1(b), 2(a) to (f) and 3 and Mr. Pujari, learned APP for Respondent Nos.5 and 6.

2. Perused the impugned order dated 17.07.2022. This order has been passed in Application filed below Exhibit-260 preferred by legal heirs of original Plaintiff No.2 seeking cross-examination of witness of Defendant No.3(a).

3. Record reveals that original Plaintiff Nos.1, 2 and 3 were represented learned Advocate Mr. P. E. Kulkarni who has filed his Vakalatnama on their behalf. Cross-examination of witness of Defendant No.3(a) was commenced by Mr. P. E. Kulkarni on behalf of

all Plaintiffs and he cross-examined the said witness for a considerable length of time and the cross was concluded on 13.02.2020. However, in the interregnum some time in the year 2018, Plaintiff No.2 expired and his legal heirs namely Plaintiff No.2(a) to 2(e) were subsequently brought on record. When the cross-examination of the witness of Defendant No.3(a) was concluded on 13.02.2020, an oral application was made by Advocate Mr. G. P. Kadam representing Plaintiff Nos.2(a) to 2(e) for cross-examination of Defendant No.3(a) on their behalf. The said oral Application was resisted by the Petitioners on the ground that cross-examination of the witness had already commenced on behalf of all Plaintiffs by Mr. P. E. Kulkarni and therefore request made by Advocate Mr. G. P. Kadam now on behalf of Plaintiffs Nos.2(a) to 2(e) be rejected. Application was subsequently preferred by Plaintiff Nos.2(a) to 2(e) below Exhibit-260 which the learned Trial Court has however allowed.

4. Mr. Shah, learned Advocate for the Petitioner / original Defendant No.3(a) would submit that the practice of dual representation by Advocates in the facts and circumstances of the present case should not be allowed by the Court as it would clearly amount to jeopardising the entire cross-examination which has already taken place and now allowing the legal heirs of the deceased Plaintiff to now fill up the lacunae in their case by giving them a second chance.

5. That apart, he would submit that in the present case admittedly, the predecessor-in-title of the newly added Plaintiff Nos.2(a) to 2(e) was represented by Advocate Mr. P. E. Kulkarni who had commenced cross-examination on behalf of all Plaintiffs initially.

6. From the above, it is clearly seen that merely by engaging a different Advocate by the newly impleaded Plaintiffs, they have now sought a fresh round of cross-examination of the witness of Defendant No.3(a). Decision in the case of **Venkatrao Pai and Sons Ltd. V/s. Narayan Bansilal**¹ is relied upon by Mr. Shah. Paragraph No.5 of the said decision reads thus:-

“5. In this case, the same procedure should have been followed, when a separate vakalatnama was sought to be filed in the suit on behalf of each of the two plaintiffs in January last. The learned Judge, however, not only allowed the two plaintiffs to be represented by their own respective advocates but permitted each of the advocates to cross-examine the defendants and their witnesses to the obvious harassment of the latter. When this strange and unprecedented mode of cross-examination reached an intolerable pitch, the present applicant made an application to the learned Judge to intervene and prevent its further exploitation. The learned Judge, however, dismissed that application. It is really very strange that the learned Judge should have countenanced the employment of different advocates for the two plaintiffs in the suit on the most curious ground that there might be a difference in the views of the two plaintiffs as to the manner in which the case should be conducted on their behalf. Besides, I cannot understand the observation of the learned Judge that he had no power to prevent the advocates of each of the plaintiffs from cross-examining the defendants and their witnesses and that all that he could do was to prevent any over-lapping of the questions that might be put to them during their cross-examination. Even under the Code of Civil Procedure, for the purpose of saving the time of the Court, power is given to the Court under O. I, r. 11, in cases where the plaintiffs are not represented by any counsel or advocate, to give the conduct of the case to any one of the plaintiffs. In face of this power, in my opinion, the learned Judge was not right in his observation that he had no power to prevent

1 1960 SCC OnLine Bom 97.

double cross-examination of the same defendants and the same witnesses at the hands of two different counsel or advocates of the two plaintiffs. The Court must always see that its time is not unnecessarily wasted and the proceedings are not unduly protracted. Examination or cross-examination of witnesses should always be done by one of the counsel appearing on behalf of the plaintiffs where more than one appear—and there is no reason to doubt the competence of any one of these counsel in that behalf—and it is not right to allow more than one of their counsel to do it. It is a very healthy practice which has stood the test of over a century in the Courts of this country that in cases where more than one person have joined as co-plaintiffs, there should be only one counsel who should be in exclusive charge of the case on behalf of all of them. It is undoubtedly open to the plaintiffs to engage as many counsel as they want. It all depends upon the length of their purse. But all the counsel or advocates, engaged by them must appear jointly for all of them and not separately for one or more of them and only one of such counsel or advocates has got the right to be in charge of the case on behalf of all of them.”

7. The sum and substance of the present case is that double cross-examination has been allowed by the Trial Court by different Advocates in the trial.

8. It has been held by the learned Single Judge of this Court (Coram : S. M. Shah, J.) in the above decision that it may undoubtedly be open to the Plaintiffs to engage as many Advocates as they want, but it all depends upon the length of their purse. Assuming that if more than one Advocates are engaged, the fundamental principle of law requires them to appear jointly and not separately and in that view of the matter the impugned order dated 17.07.2022 is not sustainable and is therefore quashed and set aside.

9. With the above directions, Writ Petition stands allowed.