



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

5 WRIT PETITION NO. 8470 OF 2024

Parasram Laxman Kale

....Petitioner

VERSUS

Janabai Ashok Dhokle & others

.....Respondents

.....

Mr. Imran Khan Guftar Khan Durrani, Advocate for the Petitioner.

Mr. R. V. Gore, Advocate for Respondent Nos. 1 and 2.

CORAM : R. M. JOSHI, J.

DATE : 24th MARCH, 2025.

PER COURT :

1. By consent of both sides, heard finally at the stage of admission.

2. This petition takes exception to the order passed below Exhibit 73 in Special Civil Suit No. 139/2021 whereby the Trial Court has rejected the application filed by Defendant No. 3 seeking permission to examine Defendant No. 4 as his witness.

3. Admittedly, Special Civil Suit No. 139/2021 is a suit for partition and separate possession of the suit property. Defendant No. 3 has filed written statement. Defendant No. 4, who is sought to be

examined as a witness by Defendant No. 3, has not filed written statement. After the evidence of Defendant No. 3 is over, he sought examination of Defendant No. 4 as his witness. This application came to be rejected on the ground that since no written statement is filed by Defendant No. 4, she cannot be allowed to appear as witness for Defendant No. 3.

4. Learned counsel for Petitioner submits that the Trial Court has not recorded any finding about Defendant No. 4 being not relevant witness for the decision of the case. It is his submission that solely on the ground that no written statement is filed by the witness, the application came to be rejected.

5. Learned counsel for Respondents/original Plaintiffs supported the impugned order by placing reliance on judgments of coordinate Bench of this Court in case of Suresh Sahebrao Tawale vs. Uttam Shankar Ghadge and others, **2012(5) Bom.C.R. 495** and Digambar s/o Manikrao Jadhav through LRs. vs. Dattatraya s/o Manikrao Jadhav through LRs and others, **2021(6) ALL MR 401**. It is his submission that a consistent view has been taken by the Courts that the parties cannot be permitted to call adversary as his

witness. He has also placed reliance on Paragraph No. 229 of the Civil Manual.

6. There cannot be any dispute with regard to the proposition sought to be canvassed by learned counsel for the Respondents on the basis of the judgments cited supra. However, in this case, application for examination of witness is not filed by the adversary party. In the said cases, the party having adversary interest was sought to be called as the witness which is not permissible in law. Here in this case, there is nothing to indicate that the interest of Defendant No. 4 is adversary to the interest of Defendant No. 3. Merely because in the suit for partition all parties are treated as Plaintiffs, that would not preclude Defendant No. 3 to examine Defendant No. 4. it becomes immaterial as to whether such party has filed written statement or not. The party may not be in a position to prove his/her case, however, he/she cannot be prevented from being examined as witness by the other Defendant who has filed written statement.

7. As rightly pointed out by learned counsel for the Petitioner, the Trial Court has not held that Defendant No. 4 is not

relevant witness for decision of the case. In view of the above, the impugned order cannot sustain. Impugned order, therefore, stands set aside. Application Exhibit 73 is allowed. Defendant No. 3 to examine Defendant No. 4 on the next date of hearing i.e. 05.04.2025. It will be the responsibility of the Petitioner/Defendant No. 3 to call this witness without assistance of the Court. In case, Defendant No. 3 fails to examine Defendant No. 4 on that day, the right of Defendant No. 3 to examine Defendant No. 4 shall stand forfeited. Trial Court is directed to expedite the suit.

(R. M. JOSHI)
Judge

dyb