



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10248 OF 2024

Lalita Dilip Dhule

....Petitioner

VERSUS

Karan Dilip Dhule & another

.....Respondents

Mr. S. S. Gangakhedkar, Advocate for the Petitioner.

Mr. S. B. Ghatol Patil, Advocate for Respondents.

CORAM : R. M. JOSHI, J.

DATE : 23rd SEPTEMBER, 2025.

PER COURT :

1. This Petition takes exception to the order of rejection of the request made by the Defendants for leading evidence of Defendant No. 2.

2. The facts as they appear from record indicate that Respondent No. 1 filed suit against the Petitioner and Respondent No. 2 for declaration that he is the adopted son of the Defendants. The suit is contested by the Defendants. Plaintiff, after framing of issues, led evidence. Defendants examined one witness and closed evidence on 18.12.2023. Thereafter Trial Court heard arguments of both sides. At this stage, Defendant No.2 filed application for her cross-

examination before the Trial Court. Since the application came to be rejected, this Petition.

3. Learned counsel for Petitioner submits that having regard to the nature of dispute involved in the suit, evidence of the parents would be relevant for decision of the case. It is his submission that owing to the ill health of Defendant No. 1, who is husband of Defendant No. 2, Defendant No. 1 nor Defendant no. 2 could remain present before the Court for leading evidence. It is his submission that having regard to the facts of the case, it was necessary that the Trial Court ought to have granted one opportunity to the Defendants to lead evidence. He, on instructions, makes a statement that Defendant No. 2 only would record her evidence and that Defendant No. 1 will not lead any evidence. He makes a further statement that except for examination of Defendant No. 2, no other witness will be examined. The statements are accepted as undertaking before the Court.

4. Learned counsel for contesting Respondent i.e. Plaintiff opposed the Petition by contending that the facts as they appear from record do not justify the request of Defendant No. 2 to lead evidence.

It is his submission that the Defendants instead of stepping into the witness box examined one witness on their behalf and in order to fill up the lacuna Defendant No. 2 wishes to examine herself. It is submitted that the suit is pending since 2015 and hence the order passed by the Trial Court of rejecting the request made by Defendant no. 2 is justified.

5. There would not be any straight jacket formula to decide as to the circumstances in which the party can be granted opportunity of leading evidence. Though there is some substance in the contention of learned counsel for the Respondent that the suit is of the year 2015 and that Defendants had led evidence of one witness, material on record placed before this Court indicates that the Defendants are senior citizens and there is prima facie material to show ill health of Defendant No. 1. In such circumstances, justification sought to be given for not leading evidence needs to be accepted. Moreover, having regard to the fact that the issue involved before the Trial Court is about determination of status of Plaintiff to be adopted son of the Defendants, there would not be any other apt evidence but the evidence of the adoptive parents. Having regard to

these facts, this Court is inclined to exercise discretion by permitting Defendant No. 2 to lead evidence.

6. However, in order to ensure that no further delay is caused in disposal of the suit, the parties are directed to cause appearance before the Trial Court on 06.10.2025. On that day, Defendant No. 2 to file affidavit in lieu of examination-in-chief. Advanced copy be provided to the Plaintiff. Trial Court to permit Plaintiff/counsel on behalf of Plaintiff to cross-examine Defendant No. 2 on that day. Cross-examination be completed on the same day. Defendants are directed to file pursis of closing evidence on that day itself after cross-examination is over.

7. Since the suit is of the year 2015 and twice heard by the Trial Court, Trial Court to dispose of the suit in accordance with la within a period of a month therefrom. Needless to say that all issues are kept open for agitating before the Trial Court. Petition stands allowed in aforesaid terms.

(R. M. JOSHI)
Judge