



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8000 OF 2024

1. Vinayak Dattu Kshirsagar
Age: 70 years, Occ: Agriculture
2. Govind Vinayak Kshirsagar
Age: 50, Occ: Agriculture
3. Shahuraj Vinayak kshirsagar,
Age: 44 years, Occ: Agriculture

Petitioner Nos.1 to 3 R/o: Rathoda,
Taluka: Nilanga, District: Latur

4. Meenabai Sonerao Suryawanshi
Age: 48 years, Occ: Housewife,
R/o Near Mahadev Mandir,
Thergaon, Pune, District: Pune.
5. Padminbai Vinayak Kshirsagar
Age: 65 years, Occ: Household,
R/o: Rathoda, Taluka, Nilanga,
District: Latur.

.....PETITIONERS

(Original Defendant nos.1 to 5)

VERSUS

Seenabai Anil Mane
Age: 30 years, Occ: Household,
R/o: Kamalnagar, Taluka Aurad,
District: Bidar.

.....RESPONDENT

(Original Plaintiff)

Mr. Abhijit Choudhari, Advocate for the Petitioners
Mr. Amarjeet V. Patil, Advocate for Respondent

CORAM : AJIT B. KADETHANKAR, J.

DATED : 13TH MARCH, 2026

ORAL JUDGMENT :-

. Rule. Rule made returnable forthwith.

2. Heard learned Counsel Mr. Abhijit Choudhari, learned Counsel for the petitioners and Mr. Amarjeet V. patil, learned Counsel for the respondent.

3. Regular Civil Suit No.58 of 2015 came to be filed by the plaintiff/sister for partition and separate possession in the Court of learned Civil Judge, Senior Division, Nilanga against her parents, two brothers and one sister. The defendants resisted the claim of the plaintiff by filing their written statement. Thereafter issues were framed for determination. The plaintiff completed her evidence and she was cross-examined by the defendants. The evidence of the plaintiff was closed.

4. Thereafter, the defendants also sought to examine certain witnesses. Initially the evidence came to be closed by order dated 08.12.2022 observing that the defendants failed to adduce the evidence despite having given number of opportunities. Thereafter, the defendants filed an application

at Exhibit 55 seeking permission to adduce their evidence. The said application came to be allowed vide order dated 18.03.2023. Accordingly, the defendants examined defendant no.3 as D.W.1. Defendants also examined one Vishwanath Suryawanshi as D.W.2. The evidence of both these witnesses is over.

5. After completion of the evidence, the defendants filed an application seeking permission to lead further evidence. The said application came to be rejected vide order dated 22.02.2024, passed below Exhibit-66. By the said order the Trial Court also closed the evidence of the defendants. Thereafter, an application below Exhibit-67 came to be filed by the petitioners/defendants on 12.03.2024 seeking recall of the order closing their evidence. Vide impugned order dated 03.04.2024, the learned Trial Court rejected the application below Exhibit-67 observing that the defendants had been granted several opportunities to lead their evidence, but had failed to adduce the same. It is also observed that the defendants were not diligently prosecuting the Court proceedings and appeared to be interested in protracting the process of the Court.

6. The learned Civil Judge also observed that the application was also not convincing and that there was nothing on record to substantiate the grounds mentioned therein. As such, the defendants are before this Court.

7. Mr. Abhijit Choudhari, learned Counsel for the petitioners submits that since passing of the impugned order, the suit has now reached the stage of arguments of the parties. He would submit that the defendants in fact intend to examine only defendant no.5, and do not propose to examine any other witness. He would submit a copy of Roznama dated 03.04.2024. Referring to the copy of Roznama, he would submit that the application at Exhibit-67 was filed alongwith the examination-in-chief sought to be produced by the defendants' witness namely Vishwambhar Webnale.

8. Mr. Choudhari, learned Counsel for the petitioners submits the defendants do not insist for an opportunity to lead evidence of several witnesses to demonstrate the merits of their case. That, the defendants undertake not to seek any further adjournment in the suit and also undertake that no further application shall be filed seeking permission to adduce additional evidence. He submits that if the Court grants

permission to the defendants, the defendant shall examine defendant no.5 only, and thereafter they would argue the suit finally. He would submit that the defendants instead of examining any other witnesses, only prays to allow the defendant no.5 to examine herself.

9. Mr. Amarjeet V. Patil, learned Counsel for the respondent/plaintiff although heavily objects such application; however with reluctance he would submit that if the statement of the petitioners is taken on record and if the trial is made in time bound manner, the appropriate directions may be issued. However, he prays that petitioners be saddled with heavy costs.

10. I have heard the learned Counsel for the respective parties extensively. It is a matter of fact that since after 03.04.2024 the suit has not proceeded further. A statement has been made before this Court by the defendants that they would examine only defendant no.5. It is undertaken by the defendants/petitioners that they would not seek a single adjournment on any count in the suit and would argue the suit finally on the date to be fixed by the Trial Court.

11. In view of this, I am of the considered view to give at least a last opportunity to the defendants to lead evidence. In the interest of justice and by way of indulgence, I deem it appropriate to allow the Writ Petition with certain directions. Hence, the following order:

ORDER

- i. Writ Petition stands allowed.
- ii. The order dated 03.04.2024, passed by the learned Civil Judge Senior Division, Nilanga in Regular Civil Suit No.58 of 2015 is quashed and set aside.
- iii. On 18.03.2026, being the date already fixed in the suit, the defendants shall produce on record the examination-in-chief sworn by the defendant no.5 and shall ensure presence of defendant no.5 for cross-examination on any day. Plaintiff shall cross-examine such witness on the same day or on such date fixed by the learned Trial Court at the request of the plaintiff.
- iv. Undertaking of the petitioners that the defendant no.5 shall be present for cross-examination is taken on record. In the event of failure by the defendants to produce defendant no.5 for cross-examination on the date fixed by the learned Trial Court, the examination-in-chief

filed by the defendant no.5 shall stand discarded. Thereafter, no permission shall be granted to the defendants to adduce further evidence.

v. The learned Trial Court shall then proceed for final disposal of the suit. In any case, the trial of the suit shall be concluded in the period of two months from today since the matter is already fixed for final orders.

vi. In the circumstances, the defendants shall pay the costs of Rs.10,000/- to the plaintiff to be deposited in the learned Trial Court on 18.03.2026. Deposit of costs is a condition precedent for submitting the examination-in-chief by the defendant no.5. Failure to deposit the costs shall take away the effect of this order.

vii. The plaintiff is permitted to withdraw such costs.

viii. Rule made absolute in above terms.

ix. Writ Petition is disposed of accordingly.

(AJIT B. KADETHANKAR, J.)