

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4302 OF 2011

Balaji S/o Namdeo Kadam

Age : 47 Ys., Occ. Agril.,

R/o : Maralak (Kh.),

Tq. & Dist. : Nanded.

.... PETITIONER

V E R S U S

1. Digamber S/o Namdeorao Pawar

Age : 75 Ys., Occ. Agril.,

R/o : Rajendranagar,

Nanded.

2. Jagatrao S/o Laxmanrao Mule

(Died), through L.Rs. :

2-A Deelip S/o Jagatrao Mule

Age : 63 Ys., Occ. Business,

R/o : Ganeshnagar

Nanded.

3. Deepak S/o Jagatrao Mule

(Died), through L.Rs. :

3-A Sow. Godavaribai W/o Jagatrao Mule

Age : 75 Ys., Occ. Household,

R/o : Ganeshnagar

Nanded.

4. Bhaurao Chavan Sahakari

Sakhar Karkhana Ltd.,

Laxminagar, Degaon Yelegaon,
Tq. Ardhapur, Dist. Nanded
Through its Managing Director.

.... RESPONDENTS

Mr. S.S.Rathi, Advocate for the Petitioner.
Mr. M.R.Pande, Advocate for Resp. No. 1.

CORAM : S.V. GANGAPURWALA, J.
DATE OF JUDGMENT : 30/06/2011

PER COURT :

1. At the out set, Mr. S.S. Rathi, the learned counsel seeks leave to delete respondent nos. 2 to 4. Leave granted at the risk of the petitioner.
2. Rule. Rule made returnable forthwith. With the consent of the learned counsel for the respective parties, taken up for final hearing.
3. The present respondent no. 1 has instituted Suit, in which the present petitioner is defendant no. 3. The plaintiff initially led Examination-in-Chief on 25/7/2006. The matter was adjourned for deciding various other applications. Thereafter, on 26/7/2010, the matter was kept for cross examination by the petitioner. On that day, the adjournment application was moved, which was rejected by the trial court. Thereafter on the next date, the petitioner moved application (Exh. 64) seeking permission to

cross examine the plaintiff. The said application was rejected on the ground that the earlier application is rejected. Thereafter vide Exh. 66, the petitioner sought review of the earlier order. The said application also came to be rejected. Aggrieved thereby, the present petition is filed.

4. Mr. Rathi, the learned counsel for the petitioner submits that the Court below has taken a very hyper technical view. The reasons mentioned seeking time to cross examine was genuine. After a long gap, the matter was kept on 26/7/2010 for cross examination. On that day, the application was made seeking adjournment for cross examination. The same was rejected without assigning any reasons. On the next date, permission was sought to cross examine the plaintiff. The same was also rejected on the ground that the earlier application is rejected. The learned counsel contends that the dispute is regarding partition of immovable properties. The rights of the petitioner are involved in the immovable property and as such they may be allowed to contest the Suit on merits.

5. Mr. Pande, the learned counsel for the respondent no. 1 submits that ample opportunity has been given to the petitioner to cross examine, but the petitioner is protracting the matter on one or the other pretext. The reasons mentioned for adjournment also were not genuine.

The ground mentioned for adjournment do not come within the ambit and purview of Order XVII Rule 1 of the Code of Civil Procedure. According to the learned counsel, the trial Court has rightly passed the order in rejecting the applications.

6. The Suit deals with the rights of the parties in an immovable property. It is seen that after the Examination-in-Chief in the form of affidavit was filed by the plaintiff, various other applications were filed and the same were decided. On 26/7/2010, the matter was kept for cross examination of the plaintiff and on that day, an application was filed which was rejected and on the next day, an application was filed seeking permission to cross examine the witness. This fact does not depict casual approach of the petitioner, on the contrary, on the next day an application was filed seeking permission to cross examine the witness. The Court while rejecting the same has taken very pedantic approach. Taking into account the nature of the dispute, opportunity deserves to be given to the petitioner to cross examine the plaintiff.

7. In the result, the Writ Petition is allowed. The impugned orders are quashed and set aside on condition that the petitioner pays cost of Rs. 1,000/- [Rupees One Thousand only] to the plaintiff within the period

of one (1) week from today. The trial Court shall allow the petitioner to cross examine the plaintiff. The petitioner shall co-operate with the trial of the Suit and shall not seek any unnecessary adjournments.

8. Rule is accordingly made absolute.

[S.V. GANGAPURWALA,J.]

KNP/WP 4302.2011 - [J]