

Order below Exh. 141

1. The suit is instituted for partition, possession of share and perpetual injunction. The plaintiffs evidence has been over. The matter is pending for cross-examination of defendant witness No.2. But, on 24/07/2019 the plaintiff and his learned advocate were absent before court. So, the No cross order came to be passed against plaintiff. Hence, by present application the plaintiff prayed to set aside the No cross order of defendant witness No.2.

2. It is contended in this application that, after filing of evidence affidavit of defendant witness, the defendant has taken too many dates for his cross-examination. On many dates the said witness was absent before court. But, due to illness the plaintiff did not remain present before court on 24/07/2019. And on same day the No cross order came to be passed on against him. So, in the interest of natural justice their need to give him a chance to cross-examine the defendant witness.

3. On the other hand, defendants filed his say below application and stated that the present witness is extreme old age. His partial cross-examination has been recorded on 20/02/2019. Since, then plaintiff failed to cross-examine him. So, on 24/07/2019 this court rightly passed No cross order passed against the plaintiff. Hence, the defendants prayed to reject the application.

4. Perused, the application and say. Heard learned Advocates for both sides. As per Roznama it appears that, after 20/02/2019 the defendant witness was absent for continuous fixed four dates. The defendants himself has taken time for cross-examination on 19/03/2019 vide Exh.137, 06/06/2019 vide Exh.137A, on 28/06/2019 vide Exh.138. Hence, after 20/02/2019 the defendant witness appeared before court on 24/07/2019. And on the same date the No cross order came to be passed against plaintiff. It is also important to note that the present suit is for partition and for the principal of natural justice it is necessary to give both the parties full opportunity to present their case. So, it is necessary to give opportunity to the plaintiff to cross-examine the defendant witness. At the same time it is necessary to compensate the plaintiff for inconvenience caused to defendants. Hence, in the interest of the natural justice, I proceed to pass the following order.

Order

1. The no evidence order passed below Exh.102 dated 24/07/2019 is hereby set aside subject to cost of Rs.300/-.
2. The cost amount be paid by present applicant to defendants on or before next date.
3. The application stands disposed accordingly.

Date :- 27/11/2019

Sd/-
(S.D.Yadav)
Jt. C.J.J.D. Renapur

C E R T I F I C A T E

I affirm that the contents of this P. D.F. file order are same word for word as per original order.

Name of Stenographer	: Dhanshri G. Bhadke
Court Name	: S. D. Yadav, Jt.C.J.J.D., Renapur.
Order Date	: 27/11/2019
Order signed by presiding officer on	: 27/11/2019
Order uploaded on	: 27/11/2019