

Order below Exh. 115 in R.C.S. No. 52/2009

1] This is an application submitted by Plaintiff under section 136 of the Indian Evidence Act with Order 18 Rule 4 read with Section 151 of the Code of Civil Procedure (CPC), for striking off Sub Paragraph No. 3 of paragraph 3, 4, 5 and 6 as mentioned in the evidence by way of affidavit submitted by defendants No. 1 and 2 at exhibit-108 dated 27-09-2013.

Prefatory facts are as under :

2] The Plaintiff has instituted this suit for claiming the relief of recovery of possession in respect of suit properties on the basis of her successional rights. She is a daughter of deceased Mahadu Devrao Bhelonde. Defendants by filing their affidavit in lieu of evidence at exhibit 108 especially in Sub Paragraph No. 3 of paragraph 3, 4, 5 and 6 exaggerated the version and travelled beyond the pleadings as mentioned in the written statement at exhibit 22. It is impermissible at law. The evidence of defendants is not related to the issue, which the Court cannot decide and part of the evidence is irrelevant. It is not related with the issue which the Court cannot decide. It be struck off/or can be ignored even before the commencement of cross examination. Accordingly prayed for allowing this application.

3] Defendants resisted this application on the ground that, this application is not tenable. The cause for concern is that, the issues have been cast upon defendants to prove their stand. The facts narrated must be proved as per the law. The evidence led is relevant and connected to the issue so framed. Accordingly prayed for rejection of this application.

4] Heard the Learned Counsels of both sides at some length. The learned counsel of Plaintiff profitably placed reliance on the Judgment of Honourable Bombay High Court in the Case of ***Mr Jitendra Singh Rajendra Singh Kushwah and Ors vs Suresh Rajendra Singh Kushwah*** 2014 (2) ALL.MR 132. he persuaded me to go through the following paragraph of pious Judgment. “13. As far as maintainability of this Chamber summons is concerned, on perusal of Rule 121(5) and 121(38), in my view, since 121(5) applies to the pleadings and not to evidence, such rule will not apply to the application filed by the plaintiff for striking of the part of the evidence. As far as rule 121(38) is concerned, that gives discretionary power to the court to dispose of the matters which are not expressly required to be disposed of in the court by hearing the same in chambers. The said rule also does not apply to such application. In my view, section 151 of the Code of Civil Procedure, 1908, gives inherent powers to the court to strike of the irrelevant

evidence at this stage with a view to avoid any further delay in the matter and to avoid any cross examination on irrelevant issues. In my view, part of the evidence which is on the face of it irrelevant and not relevant to the issue involved or issue which the court ultimately cannot decide, can be struck of and/or can be ignored even before commencement of cross examination.”

{N.B.---The above paragraph originally is Para 12 as per reporting in MANU/MH/1904/2013}

5] Per contra the learned counsel of defendants submitted that this Ruling is not applicable to the facts of this application.

6] Having taken a holistic view of the application, with my palpable sense of respect, it is not out of place to mention that, there is no specification or clarification in respect of inconsistent evidence as stated. There is no orchestration or projection of alleged inconsistency by pointing out the verbatim of particular paragraph. In absence of any material the Court could not be in a position to concentrate upon a particular inconsistency. The above pious rule of law with respect is not applicable because it is chiefly connected with the Original Jurisdiction of the Honourable Bombay High Court in deciding the Chamber Summons. Be that as it may, the rule further suggests that, the irrelevant portion can be ignored even before

commencement of cross-examination.

7] It is settled exposition of law that, no amount of evidence can be looked into which is beyond the pleadings. But the moot question is whether the party can be restrained from taking alternative pleas. There might be no restriction as such. To fortify my view I refer the pious view of his Lordship for contemplation “The court can prevent a party from adducing evidence in case it arrives at a conclusion that evidence sought to be adduced is irrelevant. If alternate and even inconsistent stands are not prohibited by law and allowed to be pleaded, even the Court will not be able to object to leading the evidence on inconsistent pleas and the party will be doing so at its own risk and peril. But there is no provision that enables the Court to dictate the party to elect the ground of attack or defence the party should persist by waiving other plea or ground of attack and defence, which is either inconsistent or in conflict with the one persisted”. A reference can be had to the judgment of the Honourable Bombay High Court in the case of ***Dadabhau Shankar Ghodke and Ors. vs. Mohanlal Kanhyalal Agrawal and Ors.*** Reported in **2003 (2) MhLj 446** (decided on 17.06.2002 - BOMHC) : **MANU/MH/0666/2002.**

8] The Plaintiff can adopt the procedure in the Indian Evidence Act for highlighting improvements or may it be

ignored. As there is no specification or clarification it is bereft of logic to arrive at any view about alternate evidence or inconsistency in the evidence at this stage. Hence this application deserves to be rejected. Resultantly, I pass the following order.

ORDER

- 1) Application is rejected.
- 2) Costs in cause.

Date : 17-10-2018.

Sd/-
(Wahab A. Syed)
Civil Judge J.D. Naigaon Bz.

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment are same word to word, as per the original Judgment.

Name of the Stenographer : P. N. Karre

Court Name : Court of Judicial Magistrate F.C. Naigaon(Bz)

Date : 17-10-2018

Judgment signed by the Presiding Officer on : 17-10-2018

Judgment uploaded on : 17-10-2018