


MHNG180000322011 	<u>REGULAR CIVIL SUIT NO. 18/2011</u> <u>ORDER BELOW EXH. 106</u> <u>Bhaurao Vs. Prabhakar</u> (Passed on this 16th December, 2022)
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This is an application on behalf of plaintiff No. 5 stating that, T.I.L.R. has not shown necessary details in the map. Necessary document which ought to have demanded to defendant Prabhakar Pande were not demanded. He has not mentioned base upon which the report is made. It appears to him that T.I.L.R. had filed contrary report as he might have been arranged or manage by the defendant. Therefore, he prayed for calling T.I.L.R. Mr. S.P. Khadse to cross-examine him.

2. Defendants have resisted the application by filing say on page No. 4 of the application stating that, Court Commissioner is witness of the plaintiff as application to appoint Court Commissioner was moved by the plaintiff. Right of cross-examination is not available to the plaintiff in absence of examination in chief. Therefore, he prayed for the rejection of the application.

3. Heard Ld. Advocates for the parties. They have submitted in terms of contents of the application and say. Gone through the record. Order below Exh. No. 101 passed by My Ld. Predecessor on 10.03.2022 discloses that T.I.L.R., Kalameshwar was appointed to measure agricultural land bearing Gat No. 189 and to show encroachment if any, made by the defendants over land Gat No. 189. He further appears that, report of T.I.L.R. dtd. 13.09.2022 is received by this Court and objections from the parties were called on 19.09.2022 on the day of its receipt.

4. Record discloses that, the matter is fixed for evidence Section 137 of The Indian Evidence Act, 1872 (The Evidence Act for brevity) provides that the examination of a witness by the party who calls him shall be called his examination in chief. Section 138 of the Evidence Act requires that witness must be examined in the order mentioned in the section. It provides that witnesses shall be first examined-in-chief, then (if the adverse party show desires, cross-examine, then (if the party calling him so desires) re-examined. Thus a party calling a witness cannot cross-examine him. In other words a witness not previously called by adverse party cannot be called only to cross-examine him. Only the scope of asking leading question to the witnesses called by a party, is discretion of the court as per Section 154 of the Evidence Act. Considering these provisions, I am of the opinion that, the application is devoid of merits. Therefore, submission on behalf of the applicant cannot be accepted. For the reasons I am of the opinion that the application shall be rejected. Accordingly I pass order.

ORDER

1. The application is rejected.
2. Costs in cause.

Kalmeshwar.
Date : 16.12.2022.

(Y.S. Kawade)
Joint Civil Judge Junior Division,
Kalmeshwar, District Nagpur.

CERTIFICATE

I affirm that the contents of the this PDF file order are same word to word,
as per the original Order.

Name of the Stenographer :- R. S. Daware (Gr. III)