

Order Below Exh.66 in Regular Civil Suit No.8/2016
(CNR. No.MHRT 080000772016)

This is a suit for perpetual injunction. In all, there are three plaintiffs. Plaintiff No. 01 Mahesh Khot has deposed before the Court as PW01. In his evidence affidavit it is stated that he is deposing for himself and other two plaintiffs. Moreover, during his cross-examination, in paragraph No. 18, he has stated that plaintiffs No. 02 and 03 have not executed any power of attorney in his favour. He has further stated that, nonetheless, he is deposing for plaintiffs No. 02 and 03 too. Thereafter, evidence affidavit of plaintiff No. 03 is filed on record.

02. In this background, present application is made by the defendants No. 02 to 04. They contend that, the evidence affidavit filed by plaintiff No. 03 Sanjay Khade is liable to be discarded. According to them, as PW01 has deposed on his behalf as well on behalf of other two plaintiffs, now, the plaintiff No. 03 cannot examine himself before the Court. Therefore, his evidence affidavit is liable to be discarded.

03. Application is opposed by filing reply at Exh. 67. It is contended that plaintiff No. 03 can also be examined as a witness. The applications to the police station and to the office of DSLR, as stated in the plaint, have been made by this plaintiff No. 03. Therefore, such course can be adopted to prove those documents.

04. Perused the record. Heard both sides.

05. Learned advocate for the defendants, Shri S. C.

Aathlye, has referred the provisions of Rule 3-A of Order XVIII of the Code of Civil Procedure, 1908 and section 138 of the Indian Evidence Act, 1872, and submitted that, once a plaintiff is examined as a witness for all plaintiffs, another plaintiff cannot be examined. This would be re-examination of the plaintiffs. It cannot be permitted, unless some new matter is sought to be deposed. Further, it can be so done, only with the permission of the Court. Thus, in the present case, evidence affidavit filed by plaintiff No. 03 Sanjay Khade is liable to be discarded, according to learned advocate.

06. Learned advocate for the plaintiffs, Shri. S. H. Pednekar, has reiterated his contentions in the reply filed at Exh. 67.

07. Neither the provisions of Order XVI or XVIII of the Code nor any other provision of the Code prevents a plaintiff to depose as a witness because some other plaintiff is examined. The provision of Rule 3-A of Order XVIII would apply when a party to the suit wish to examine himself as a witness after examination as a witness of any other person who is not party to the suit. It is not so in the present case. Hence, said provision is not applicable. Moreover, in no manner, provision of section 138 of Evidence Act would be applicable to the case in hand, as the plaintiffs are not trying to examine further a person who is already examined as a witness.

08. The plaintiffs who have same pleading, are under burden to establish the facts asserted by them and which are

denied by other party. Being so, they may lead or adduce suitable oral and documentary evidence. Such oral evidence may include examination of one of the plaintiffs or more than one plaintiffs. When a plaintiff has admittedly deposed for himself and for other plaintiffs, it means that the testimony of that witness which include evidence affidavit filed by him and facts brought on record through his cross-examination be considered for himself as well for the other plaintiffs. This would not mean that any other plaintiffs cannot be examined. Rather, to corroborate the facts deposed by a plaintiff, another plaintiff in the case, may depose. There is no bar to adduce such corroborative evidence.

09. Section 118 of the Evidence Act deals with 'who may testify'. Said provision also does not bar examination of a plaintiff on the ground that some other plaintiff in the suit has deposed for himself too. Thus, in light of all the aforesaid discussion, I do not find any merit in the present application. Therefore, it is liable to be rejected. Hence, I pass following order -

ORDER

Application is rejected with costs.

Date - 13.09.2023

(B. D. Tare)
Civil Judge, J.D., Deorukh

- : C E R T I F I C A T E : -

Judgment/order in (Order below Exh. 66 in R.C.S No. 8/2016)

I affirm that the contents of this Pdf file order are same words as per original order.

Name of Stenographer	:- S. A.Bhale
Court Name	:- The Court of Civil Judge (J.D.) & Judicial Magistrate F.C., Deorukh
Date of decision	:- 13/09/2023
Judgment signed by PO. on	:- 13/09/2023
Judgment uploaded on	:- 13/09/2023