

Order Below Exh.176 in Regular Civil Suit No. 79/1994

01. The defendant has filed this application to not to read affidavit of plaintiff's witness No. 2 Narayan Sahadev Rane in evidence. According to the defendant that as the plaintiff witness No.1 Shatrughan Rane has admitted in the cross examination that no other cosharers than him will come to give evidence in the suit so now the plaintiff cannot lead the evidence of witness No. 2 Shri. Narayan Sahadev Rane who is the cosharer and so it should not be read in evidence.

02. The plaintiff filed say on this application vide Exh. 177 and contended that though the plaintiff witness No. 1 has admitted in the cross examination that cosharer will not give evidence on his behalf the plaintiff has legal right to examine any number of witness to prove his case and the defendant has no right to deny plaintiff's that right. There is no any legal provision as averred by the defendant that if plaintiff witness stated that no any witness will come to give evidence then he could not lead evidence of other witness. Plaintiff has not filed evidence close pursis therefore in such a situation he has legal right to examine any number of witness to prove his case so on above ground he prayed that application be rejected.

03. Heard the argument of both advocates on behalf of plaintiff and defendant and it is in tune with their pleadings.

04. It is the objection of the defendant that as the plaintiff

witness No.1 Shatrughan Rane has admitted in the cross examination that no other cosharer than him will come to give evidence so now the plaintiff cannot lead the evidence of witness No. 2 Shri. Narayan Sahadev Rane who is the cosharer and so it should not be read in evidence. Per contra the plaintiff though the plaintiff witness No. 1 has admitted in the cross examination that cosharer will not give evidence on his behalf the plaintiff has right to examine any number of witness to prove his case and the defendant has no right to deny plaintiff's that right. There is no any legal provision as averred by the defendant that if plaintiff witness stated that no any witness will come to give evidence then he could not lead evidence of other witness.

05. It is apparent from the cross examination of plaintiff witness No. 1 that he has admitted in cross examination that no other cosharer than him will come to give evidence but the parties to the suit are litigants who are layman generally unaware about the court proceedings which are complex and they have not sufficient legal knowledge about the things that are necessary for the proceeding of their matter. The very purpose to cross examine witness is to demolish case of other side and bring such evidence so as to discredit his testimony. Therefore, mere giving admission in cross examination itself does not give any right to defendant to restrain plaintiff from leading evidence. The evidence cannot be read or discarded only when there is deliberate delay or absence on the part of party which is not the case in this matter. Moreover there is no provision in C.P.C. to not to read evidence on basis of admission in cross examination of witnesses.

06. The plaintiff has not close his evidence by filing pursis to that effect. This being a trial court every opportunity must given to the party to prove his case otherwise there will be multiplicity of proceedings between the parties. The defendant will also not suffer on account of plaintiff's witness No. 2 as he has every opportunity of cross examination of witness and it will also help to decide the suit on merits. During the course of argument the Ld. advocate of defendant Shri. Nevagi submitted that if application is allowed he may given permission to recall the witness No.1 and again cross examine but in this application such permission cannot be granted as the defendant has to show on which ground the recall is necessary and file separate application for it. Therefore, in view of aforestated reason the application is liable to be rejected. Hence following order.

ORDER

The application is rejected.

Sd/-xx

Date-10/04/2019

(S.H.Panhale)
Jt. Civil Judge (J.D.), Sawantwadi.