

Gorakh Pandurang Durape & Ors.2 V/s.
State of Maharashtra & Ors.17
CNRNOMSHO100002162013

ORDER BELOW EXH.200 IN RCS NO.53/2013
(PASSED ON 04/07/2024)

Defendants No.5 to 11 have submitted this application that, permission may be granted to cross-examine defendant No.14.

2. In short it is application that, the suit is submitted for declaration and perpetual injunction with declaration that, order passed by defendant No.2 on 21/09/2013 is illegal and not binding on plaintiff. The plaintiff and defendants No.5 to 18 have interest in the suit property. Suit property is an ancestral property. Predecessor of plaintiff Gyanba Durape during in his life time had given the suit property on lease in favour of the Brahan Maharashtra Sugar Syndicate Limited, Pune on 13/02/1943. In the year 1961, the Maharashtra Agricultural Land Ceiling and Holding Act come into existence. Therefore, the Brahan Maharashtra Sugar Syndicate was excess in holding land, therefore, excess land transferred in favour of Government of Maharashtra. The Government of Maharashtra thereafter established a corporation of defendant No.4 and transferred the suit property along with other agricultural land. Meanwhile the Government of Maharashtra directed to defendant No.4 to return agricultural land to its original owner or its legal heirs. The plaintiff and defendants are legal heirs of Gyanba Durape. Therefore, they have right and interest in the suit property. Defendants No.5 to 11 have submitted their written

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statement at Exh.41. Defendant No.13 has submitted his written statement below Exh.55. They have pleaded the same interest in the suit property. After commencement of evidence the plaintiff defendants No.13, 14 made collusion with each other and compromised the matter out of court, but that compromise is rejected. Therefore, defendants No.5 to 11 have submitted application Exh.167 for amendment in written statement. Amendment is allowed. Evidence of defendants No.5 to 11 is closed. Thereafter, defendant No.14 submitted his evidence by way of affidavit. As the plaintiff and defendants No.13 and 14 made collusion with each other. Therefore, it is necessary, to cross examine defendant No.14 because of evidence of defendant No.14 would be adversely effected. Because defendant No.14 has given evidence contradictory and adverse to defendants No.5 to 11. Therefore, cross examination of defendant No.14 is necessary as per Section 138 of Indian Evidence Act. Hence, application may be allowed.

3. The plaintiff has submitted his say to this application below Exh.202 and denied all allegations. In short it is say that defendants No.5 to 11 have submitted their written statement and defendants No.11 to 18 have submitted their written statement. Defendants No.5 to 18 have denied claim of plaintiff, therefore, defendant No.14 is adverse against the plaintiff. Therefore, evidence of defendant No.14 will not affect right of defendants No.5 to 11. In such circumstances, the plaintiff has right only to cross examine defendant No.14.

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A compromise between plaintiff and defendant No.14 is not took place. Defendants No.5 to 11 wants to cross examine defendant No.14 with a view to wash out admission of defendant No.14 which are brought on record in cross-examination. Hence, application may be rejected.

4. Defendant No.14 has submitted his say to this application below Exh.203 that, defendants No.5 to 18 have submitted their written statement but defendants No.11, 12, 15 to 18 have not submitted their evidence. Defendants No.5 to 11 have denied relief of the plaintiff. The stand of defendant of each other is a corroborative and against the plaintiff. Accordingly, defendant No.14 has submitted his evidence by way of affidavit. The evidence of defendant No.14 is not adverse against defendants No.5 to 11. Therefore, application maybe rejected.

5. I have heard learned advocate of both sides. The suit is for declaration and perpetual injunction. Defendants No.1 and 2 have submitted their written statement below Exh.38. Defendants No.6 to 9 have submitted their written statement below Exh.41. Defendants No.9 to 11 have adopted written statement of defendants No.6 to 8 vide pursis Exh.43. Defendant No.13 has submitted his written statement below Exh.55. Defendants No.14 to 18 have submitted pursis Exh.59 and thereby adopted a written statement of defendant 13.

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6. As per submissions of learned advocate of defendants No.5 to 11 that, defendants No.12 to 14 were supporting to defendants No.5 to 11 by their written statement. But, defendant No.14 has submitted his evidence against interest of defendants No.5 to 11. On the other hand, learned advocate of plaintiff submits that, written statement of defendant No.14 and his examination-in-chief by way of affidavit Exh.198 is as per averment of his written statement. Therefore, evidence of defendant No.14 is not adverse against defendants No.5 to 11.

7. I have perused written statement of defendant No.13. Defendants No.14 to 18 have submitted a pursis Exh.59 that, written statement of defendant No.13 be treated as their written statement But, by comparison, evidence by way of affidavit of defendant No.14 Exh.198 and written statement of defendants No.13 to 18 Exh.55 and 59 are same. So, till submission of evidence by way of affidavit by defendant No.14 below Exh.198, he is not adverse against defendants No.5 to 11. So far as, evidence by way of affidavit of defendant No.14 below Exh.198 and written statement of defendants No.13 to 18 Exh.55 & 59 are same. As per averment made in the written statement Exh.55 evidence of defendant No.14 is prepared. So, till submission of evidence by way of affidavit by defendant No.14 he was supporting to the case of defendants No.5 to 11.

8. Learned advocate of the plaintiff cross examined

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defendant No.14 and in cross examination defendant 14 has given some admission about separation between family of Jagannath Pandharinath and Pandurang in the year 1990.

9. Learned advocate of defendants No.5 to 11 submits that, the defendants No.5 to 11 has submitted application below Exh.167 for amendment in plaint. Application for amendment Exh.167 is allowed and thereby the defendants No.5 to 11 carried out amendment in his written statement. When defendants No.5 to 11 have carried out amendment as per order below Exh.167 but till submission of examination-in-chief by defendant No.14 he was supporting to the case of defendants No.5 to 11. The plaintiff has cross examined defendant No.14, in cross-examination some admissions brought on record. Therefore, defendants No.5 to 11 wants to cross examine defendant No.14. By the cross-examination admission would be washed out. In such circumstance, defendants No. 5 to 11 prior to cross examination by plaintiff to defendant No.14 should have cross examined to defendant No.14. As per submission of learned advocate of plaintiff that if some admissions are brought on record in cross examination of defendant No.14 then that admission would be washed out by cross examination of defendants No.5 to 11. I agree with his submission.

10. Learned advocate of defendants No.5 to 11 relied on **Rajani Dei Versus Narottam Sahoo, 2001(3)R.C.R. (Civil) 102**, in which the Hon'ble Orissa High Court laid

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down a ratio that, a co defendant can cross examine a witness examined by another defendant. If the co defendant text a contrary stand on a relevant and material issues or the witness makes a statement which is injurious to the interest of forward defendant. This ratio is not applicable to the present application. Because defendant No.14 was supporting to defendants No. 5 to 11 by submissions of his examination-in-chief. He has given some admissions to the plaintiff's favour that does not mean the evidence of defendant No.14 is adverse or injurious to the interest of defendants No.5 to 11. in examination in chief defendant No.14 has not taken a contrary stand. Therefore, the ratio is not applicable.

11. The learned advocate of defendants relied on **Akhilesh Singh Vs. Krishna Bahadur Singh and ors, on 8th January, 2020**, in which the Hon'ble Madhya Pradesh High Court that, it is settled law that, when allegations are made against the party to the proceeding before that evidence could be acted upon that party should have ample opportunity to cross examine the person who has given evidence against him. This ratio is not applicable to the present case because defendant No.14 has not taken a contrary stand in his examination-in-chief.

12. The learned advocate of defendants No.5 to 11 relied on **Gramin vikas Sanstha and Ors. 2014 CJ Bombay 2175**. In this case, the opportunity to cross examine the material

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witness was denied. But, in the present case, in my hand, defendants No.5 to 11 wants to cross examine defendant No.14 after cross examination of plaintiff. So, by cross examination by defendants No.5 to 11 to defendant No.14 if any admissions is brought on record by the plaintiff from the mouth of defendant No.14 then that would be washed out. The learned advocate of defendants No.5 to 11 relied on **Saroj Bala Versus Dhanpati Devi & Ors., 2007(5) R.C.R. (Civil) 372.** Facts of cited case and present case are different.

13. Learned advocate of plaintiff relied on **Chinnaiah Versus Valliammal and Ors. 2023, Vol-4 MLJ, 544.** The Hon'ble Madras High Court laid down a ratio that, as per section 138 of Indian Evidence Act only an adverse party can cross examine the other party. In the present case in my hand as per the pleading defendant No.14 is not adverse to defendants No.5 to 11. Hence, the application is required to be rejected. Therefore, I pass the following order :-

ORDER

The application is rejected

Sd/-

Date-04/07/2024.

(U.V.Joshi)

Civil Judge Senior Division, Malshiras.