

ORDER BELOW EXHIBIT-121 IN R.C.S.NO. 668/2002

Plaintiff has filed the present application seeking permission to adduce further evidence.

2. It is asserted that the suit is for partition and separate possession. He has filed his affidavit in lieu of examination in chief (Exh.48) on 10.02.2009. He was cross examined on 19.08.2009. Defendants have tendered Will-deed and other documents vide list (Exh.51) on 09.04.2009. He has submitted documents below lists (Exhibits-66, 71 & 80). It was/is necessary to adduce evidence in the light of the documents. It is necessary to record the evidence in this court, being the trial court. Plaint was amended in the year 2014 as per the order passed by this court below application (Exh.94). Thereafter, two vakalatnamas (Exhibits-100 & 102) were filed on the behalf of the plaintiff. Due to inadvertence of the plaintiff and due to negligence of his advocate, evidence closing pursish (Exh.108) dated 16.03.2016 was filed. Plaintiff has come to know recently about the said pursish. It is necessary for him to adduce further evidence for further elaboration of the aspect which has been left out in the evidence already recorded. Plaintiff, therefore, be permitted to adduce further evidence. Hence, the application.

3. Defendants have filed the say and opposed the application contending that the application is false and not within four corners of law. Plaintiff has filed closing pursish (Exh.108) on 16.03.2016. Thereafter, defendant No.1 has filed his affidavit in

lieu of examination in chief (Exh.115) on 26.10.2016. Plaintiff has filed several application seeking time to cross examine him. They have, therefore, prayed for rejecting the application.

4. Perused the record and proceeding. Heard both the sides. Only point which arise for consideration is : Whether the plaintiff has made out a case to allow the application ?

5. A perusal of the record shows that issues (Exh.43) were framed on 16.08.2008. Plaintiff has submitted his affidavit in lieu of examination in chief (Exh.48) on 10.02.2009. He was cross examined by the learned advocate representing the defendants on 19.08.2009. Thereafter, evidence closing pursish (Exh.108) was filed by him on 16.03.2016. Thereafter, defendant No.1 has submitted his affidavit in lieu of his examination in chief (Exh.115) on 26.10.2016. Thereafter, plaintiff has filed the present application when the suit was pending for the cross-examination of defendant No.1.

6. It is relevant to note here that the plaintiff has opened his case (evidence) in the year 2009 and closed his evidence in the year 2016 by filing evidence close pursish (Exh.108). Thus, his evidence side was open for a period of not less than seven years. A careful reading of the application makes it clear that it is based on two grounds. Firstly, that defendants have tendered Will-deed and other documents vide list (Exh.51) on 09.04.2009 and thus he should get an opportunity to contest the authenticity of those documents. Needless to note that those documents were tendered

prior to his cross-examination. He was cross examined on 19.08.2009 and documents vide list (Exh.51) were tendered on 09.04.2009. Moreover, an issue in respect of the Will was already framed by the court and hence, the plaintiff is not having any voice to say that he came to know about the case of the defendants when they have tendered documents vide list (Exh.51). Evidence side of the plaintiff remained open for a period of almost seven years from the date of production of documents vide list (Exh.51) on 09.04.2009 by the defendants. He did nothing to examine other witness/es. He might have examined them during the said period of seven years. No one has prevented him from examining the witness/es. In the facts and circumstances, reason given in the present application cannot be accepted. Thus, the first ground is devoid of merit and hence stands rejected.

7. Secondly, he has stated that due to his inadvertence and due to negligence of his advocate, evidence closing pursish (Exh.108) dated 16.03.2016 was filed. It is relevant to note here that the pursish bears his signature. Plaintiff is not an uneducated or illiterate person. Record shows that he has engaged many advocates to represent him. He has changed the advocates since beginning from time to time. In the circumstances, it is quite difficult to believe the plaintiff that the evidence close pursish came to be filed inadvertently. It is pertinent to note that pursish (Exh.108) is in marathi language. It is not his case that he put signature on plain or blank paper. In the circumstances, he cannot be permitted to blame the advocate. Moreover, he has not filed present application within a short time after fling of pursish

(Exh. 108). His conduct shows that he was aware of the pursish. Thus, the second ground also fails.

8. Before saying omega, it is necessary to note that the suit has to proceed on each and every date. Progress of the suit cannot be arrested in a casual manner. If the plaintiff has not taken steps to examine another witness before filing pursish (Ex.108), then the Court has no option other than to proceed with the suit. No one has restricted him to adduce the evidence before filing pursish (Ex.108). He has failed to make out a case to revert back to the previous stage. In the circumstances, he cannot be permitted to reopen his evidence side. Present application lacks merit. Hence, the application stands rejected.

Date:28.06.2017

(S.K. Khan)
Jt. Civil Judge (J.D.),
Barshi,

CERTIFICATE

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

Name of Stenographer :

Court Name : S.K.Khan,
Jt.C.J.J.D.& J.M.F.C. Barshi.

Date : 28.06.2017

Judgment signed by the
presiding officer on : 28.06.2017
order uploaded on : 29.06.2017

CERTIFICATE

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

Name of Stenographer	:	Sachin V. Kondekar
Court Name	:	S.K.Khan, Jt.C.J.J.D.& J.M.F.C. Sillod Dist. Aurangabad.
Date	:	16.01.2016
Order signed by the presiding officer on	:	16.01.2016
Order uploaded on	:	16.01.2016