

R.C.S.No. 88/2017
Dattatray Vs. Maruti

Order Below Exh. 84
(Passed on 02nd February, 2024)

This is an application filed by defendant No.1 for permitting her to cross-examine the defence witness No.1 to 3 examined by the defendant No.2 & 3. It is contended by her that she has filed her written statement on record. She also filed an application (Exh.60) for deletion of names of defendant No.2 & 3. The application at Exh.59 was filed by her for de-exhibiting the Will Deed. However, both these applications came to be rejected by the Court. The issue No.1A has been framed on 18.01.2022. Even, on 23.11.2022, the issues were re-caste and the similar type of issue was again framed. In fact, considering the nature of suit and the pleadings of defendant No.2 & 3, they are coming with the case that they become legal representatives of deceased Maruti Garde on the basis of Will Deed executed by him in their favour. Accordingly, the defendants are also claiming to be in possession of the suit property. In such circumstances, it is necessary for the defendant No.1 to safeguard her rights in respect of the suit property. The defendant No.1 is required to be given opportunity to lead her evidence. Already, defendant No.2 & 3 have adduced their evidence by examining some witnesses. The defendant No.1 wishes to cross-examine said witness so as to protect her rights. Even, it is necessary so as to ascertain the credibility and truthfulness of said defence witnesses. If the defendant No.1 is not granted permission to cross-examine the said witnesses, it will cause her great prejudice. Hence, she prayed to allow the application.

2. The present application has been resisted by defendant No.2 & 3 by filing their say at Exh.86. They submitted that the defendant No.1 is not interested in the present suit property and it has been filed in collusion with defendant No.1, herself. The defendant No.1 was not having good relations with her deceased father Maruti Garde and the plaintiff as well as defendant No.1 by shaking hands together ill-treated him. The defendant No.1 has been brought on record only as a effect of technicality after the death of deceased Maruti Garde. There was civil litigations between defendant No.1, her husband and deceased Maruit Garde. There is no necessity for her to cross-examine the witnesses examined by defendant No.2 & 3. There is no any plausible reason for filing such an application. Already, there is probate proceeding in respect of the said Will Deed and the rights can be decided on its basis. The defendant No.1 has not adduced any evidence and therefore, defendant No.2 & 3 led their evidence by examining witnesses. There is no any legal provision for cross-examining the co-defendant, especially when there is no counter claim. For all these reasons, defendant No.2 & 3 prayed to reject the application by imposing compensatory cost of Rs.10,000/-.

3.. The plaintiffs have also resisted the application on the ground that they are senior citizen and if such application is allowed, it will cause delay and prolong the matter.

4. Perused the record. Heard both the sides. It is a matter of record that defendant No.2 & 3 for proving issue No. 1A & 3 have

examined several witnesses. Those witnesses have been cross-examined by the plaintiff. However, the defendant No.1 did not apply or wish to cross-examine them earlier. Now, she showed her willingness to cross-examine said witnesses on the pretext that her rights will be adversely affected, if the permission is not granted. The present suit has been filed for possession of the suit property. The defendant No.2 & 3 are claiming to be in possession of the suit property on the basis of Will Deed executed by deceased Maruti Garde, who was the original defendant No.1. After the demise of defendant No.1 Maruti Garde, the present defendant No.1 was brought on record being his legal representative and daughter. However, defendant No.2 & 3 subsequently were added as a party to the suit on the basis of Will Deed and the specific submission that they are in possession of the suit property on its basis. In such circumstances, it appears that the interest of defendant No.1 may be adverse to the interest claimed by defendant No.2 & 3. It is well settled principle of law that *“where the defendant demonstrates that the co-defendants' evidence would adversely affect his interest, cross-examination of such co-defendant is permissible”*.

5. In view of this legal proposition and in the light of specific submission of defendant No.1 to that effect, I find it is necessary to allow the present application. At the same time, it cannot be ignored that defendant No.1 was not due diligent in cross-examining the witnesses examined by defendant No.2 & 3, earlier. This is a matter of year 2017, which is pending since last more than six years. There are repeated directions to dispose of old matters on top priority and by her conduct, the defendant No.1 has caused some

delay. However, said delay cannot be at the cost of interest of the justice. Therefore, it can be dealt with by imposing certain amount of cost. Hence, following order as passed:

ORDER

1. The application (Exh.84) is hereby allowed subject to payment of cost of Rs.1,000/-.
2. The defendant No.1 is permitted to cross-examine the witnesses examined by defendant No.2 & 3.

[Dictated and pronounced in the open Court.]

Place : Wai
Date : 02.02.2024.

(R.M. Bhende)
2nd Jt. Civil Judge Junior Division,
Wai, Dist. Satara.