

ORDER BELOW EXH.92

From the contention of application and say filed by the plaintiff following points arises for my determination and I have recorded my findings thereon for the reason stated as under.

Sr. No.	Points	Findings
1	Whether the application filed by defendant at Exh.92 is liable to be allowed as prayed	Yes
2	What order ?	As per final order.

REASONS

As to point Nos. 1 & 2

2. Read application. Perused say. Perused record. Heard.
3. Advocate for the defendants has submitted that, the matter fixed for cross-examination of defendant No.1 Shubhangi however, on 08/11/2021 defendant No.1 Shubhangi suffered with paralysis due brain-stroke. Therefore, defendant No.1 Shubhangi is not able to walk and talk. Hence, she is unable to face cross-examination by attending the Court. The advocate for the defendants has further submitted that, defendant No.1 Shubhangi had filed her affidavit in lieu of examination in chief. Her further examination in chief has been recorded on 01/10/2021 and when the matter fixed for her cross-examination Shubhangi defendant No.1 is unable to walk and talk due to paralysis. So, the defendants desire to file affidavit in lieu of examination in chief of defendant No.2 by keeping the evidence i.e. examination chief of

defendant No.1 Shubhangi remained on record. He further submitted that, in the interest of justice it is necessary to permit the defendants to file affidavit in lieu of examination chief of defendant No.2 by keeping the evidence led by defendant No.1 Shubhangi as it is on record. If this application rejected the defendants will suffer irreparable loss. Hence, prayed that this application may be allowed and defendants may be permitted to lead evidence of defendant No.2 by keeping the evidence led by defendant No.1 Shubhangi on record as it is.

3. On the other hand, the advocate for the plaintiff has raised objection to this application submitting that though defendant No.1 adduced her evidence she has not been cross-examined by the plaintiff in the witness box. Therefore, her testimony has not been testified. So, it become totally illegal to submit that to retain her evidence. In view of above said facts the evidence of defendant No.1 shall not remain on record it shall be eschewed. The advocate for plaintiff has further submitted that defendant No.1 at this juncture can remain present before this Court as the tenure more than one year has been laps, moreover defendant No.1 failed to submit any documentary evidence to show that she is permanently disabled to talk and walk. Hence, prayed that this application may be rejected with cost.

4. After considering the submissions made on behalf of both the side I have gone through the record it seems from the record that, the plaintiff has filed this suit for partition and separate possession. Defendant Nos. 1 to 3 have resisted the suit by filing written statement at Exh.15 and defendant No.4 has resisted the suit by filing written statement at Exh.50. Then my learned predecessor has framed issues at Exh.16 on 31/07/2013. It also seems from the record that plaintiffs have led evidence. On 06/04/2015

the plaintiffs have filed evidence closed pursis at Exh.34. Then, matter posted for evidence of defendants.

5. It also seems from the record that Shubhange Barghat (D.W.No.1) has filed her affidavit in lieu of examination in chief at Exh.77 on 13/12/2019. Her further examination in chief has been recorded on 01/10/2021. Then matter has been posted for cross-examination of Shubhangi Barghat (D.W.No.1). It further seems from the record that on 10/12/2021 the defendants have filed affidavit in lieu of examination in chief of Sushil Barghat (D.W.No.2) on which my learned predecessor has passed order as seen, and by filing this application the defendants are seeking permission to file affidavit in lieu of examination in chief of Sushil Barghat (D.W.No.2) by keeping the affidavit in examination in chief and further examination chief of Shubhangi Barghat (D.W.No.1) on record as it is.

6. Though, on behalf of advocate for the plaintiff this application has been strongly resisted by submitting that during the further examination chief of Shubhangi Barghat (D.W.No.1) documents have been marked as exhibit and due to alleged medical issues the cross-examination of Shubhangi Barghat (D.W.No.1) could not proceeded, It is also contention of plaintiff that, Shubhangi Barghat (D.W.No.1) has not faced cross-examination so, her evidence cannot be considered without her cross-examination, and evidence of Shubhangi Barghat (D.W.No.1) cannot be retained on record. However, considering the fact that Shubhangi Barghat (D.W.No.1) has filed her affidavit in lieu of examination in chief at Exh.77. My learned predecessor Shri. V. S. Khot has recorded further examination chief of Shubhangi Barghat (D.W.No.1) accordingly, documents have been marked as Exh.83, Exh.84 and Exh.85 to 88. And also if the fact that already

my learned predecessor Shri. V. S. Khot has taken the affidavit in lieu of examination in chief of Sushil Barghat (D.W.No.2) on record at Exh.93. So, I am of the view that by keeping said examination chief of Shubhangi Barghat (D.W.No.1) on record if permission as prayed granted to the defendants to file examination chief of Sushil Barghat (D.W.No.2) on record no right of the plaintiff will be prejudiced because as per the provisions of Evidence Act to consider her testimony she has to face the cross-examination. Considering the above said discussion this application deserve to be allowed. Hence, I answer point No.1 in the affirmative and in the result in answer to point No.2 I pass the following order.

ORDER

1. The application filed by defendants at Exh.92 is allowed as prayed.
2. Cost in cause.

(Dictated and pronounced in open Court)

Date : 10/03/2023

Sd/-
(S. J. Gaikwad)
C.J.S.D. (Link Court),
Mangrulpir.

Dictated on : 10/03/2023
Transcribed on : 10/03/2023
Checked and signed on : 10/03/2023

CERTIFICATE

I affirm that the contents of this PDF file order are same word to word, as per original order.

- 1) Name of Stenographer :- R. K. Chavhan,
Stenographer (Grade-III)
- 2) Name of Court :- Civil Judge (S.D.), Mangrulpir.
- 3) Date :- 10/03/2023
- 4) Order signed by the :- 10/03/2023
presiding officer on
- 5) Order uploaded on :- 10/03/2023