

(2004) 11 KAR CK 0005
In the Karnataka High Court
Case No : Writ Petition No. 26466 of 2004

Sadananda Bhandarkar

APPELLANT

Vs

Shantharam Achuth Bhandarkar and Another

RESPONDENT

Date of Decision : 08-11-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 4

Citation : (2005) 1 KCCR 463

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : K.M. Nataraj, for the Appellant; A.S.N. Hebbar, for the Respondent

Final Decision : Allowed

Judgement

S. Abdul Nazeer, J.—Defendant No. 1 in O.S. No. 286 of 1998 on the file of the Principal Civil Judge, Jr. Dn., Kundapur, has filed this writ petition challenging the order dated 2.8.2003 whereby the Trial Court has refused to take the evidence of Defendant No. 11 filed by way of affidavit on record holding that he should have been examined immediately after the Plaintiffs' were examined.

2. The suit was filed for partition and separate possession of the properties in question. After service of summons, Petitioner has filed his defence supporting the case of the Plaintiffs. The PA holder of the Petitioner filed evidence by way of an affidavit. The said evidence was rejected on the ground that he should have filed the same immediately after the Plaintiffs' evidence.

3. I have heard the learned Counsel for the Petitioner. Though notice was served on the Respondents, they have remained unrepresented.

4. There is no prohibition under Order 18, Rule 4 of CPC for examination of the Defendant after the examination of the contesting Defendants merely because he has supported the Plaintiffs. In my view, the Trial Court has erred in not allowing the Petitioner for filing of the evidence by way of an affidavit on the ground that he should have lead his evidence immediately after Plaintiffs' evidence. It is

always open for the contesting Defendants to cross-examine the Defendant supporting the Plaintiff.

5. In the result, the writ petition succeeds and it is accordingly allowed. The order of the Trial Court dated 2.8.2003 is quashed. I direct the Trial Court to accept the evidence of Defendant-11 filed by way of an affidavit. However, liberty is reserved to the contesting Defendants to cross-examine Defendant