

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

10 WRIT PETITION NO. 10618 OF 2015

RASHIDA BEGUM ABDUL RAHMAN AND OTHERS
VERSUS
SK. MOHD. KAMRUDDIN ABDUL RAHMAN AND
OTHERS

Shri. D.P. Palodkar, Advocate, for petitioners.

Shri. M.R. Sonawane, Advocate, for respondents 1 to 4, 6.

Smt. C.S. Deshmukh, Advocate, for respondent No.5.

CORAM: T.V. NALAWADE, J.

DATE : 29 AUGUST 2016

ORDER:

1) The petition is filed to challenge the order made on Exhibit 47 of Regular Civil Suit No.147/2011 by the learned Civil Judge, Junior Division, Sillod. The application filed by the present petitioners, defendants for permission to cross examination the plaintiffs by setting the order of "No Cross" is rejected. Heard both the sides.

2) The suit is filed for relief of partition by present respondents against the petitioners by contending that the

property is left behind by Abdul Rahman Shaikh Sandu, predecessor-in-title of both, the plaintiffs and the defendants. The defendants have taken various defences like transfer of the property during life time by Abdul Rahman Shaikh Sandu.

3) It appears that examination-in-chief of the plaintiff was filed and when the matter was kept for cross-examination of the plaintiff, nobody turned up for the defendants and so order of "No Cross" was made. On the same day when application was moved for setting aside the order, the order was set aside subject to cost of Rs.50/-. It appears that again when the matter was kept for cross-examination nobody turned up for cross-examination of the plaintiff so again "No cross" order came to be made. It appears that the defendants then changed their counsel and they filed application at Exhibit 47 for setting aside the "No Cross" order and this time the trial Court rejected the application by observing that the defendants were playing delaying tactics.

4) The defendants are in possession of the suit properties and so the trial Court has made observation of aforesaid nature. It can be said that during cross examination, the defendants can get opportunity to bring on record some relevant circumstances. In that view of the matter, this Court holds that opportunity needs to be given to the defendants to cross-examine the plaintiff. In view of these circumstances this Court holds that this can be subject to payment of cost of Rs.5000/- (Rs. Five Thousand Only) by the defendants to the plaintiffs to be deposited in the trial Court within one month from today. If the amount is not deposited it is to be presumed that the present proceeding is dismissed. If the cost is deposited, permission is to be given to the defendants to cross examine the plaintiff and then it is to be presumed that the order of "No Cross" is set aside. It is submitted by the learned counsel for the plaintiff that the plaintiff is out of station for Haj and he will be returning on 20th October 2016. The matter is to be listed accordingly for examination of the plaintiff by the trial Court. The petition stands disposed of.