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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4741 OF 2015

Kamlabai Raghunath Patil
Age - 55 years, Occ - Labour
R/o Morane Pra Laling,
Taluka and District - Dhule

PETITIONER

VERSUS

1. Sau. Malti Kishor Sonwane
Age - 31 years, Occ - Household
R/o Morane Pra Laling,
Taluka and District - Dhule

RESPONDENTS

2. Sau. Nisha Chandrakant Patil
Age - 26 years, Occ - Household
R/o Nashik, Taluka & District - Nashik

(Dismissed)

3. Sau. Monali Eknath Patil
Age - 25 years, Occ - Household
R/o Godgaon, Taluka - Bhadgaon,
District - Jalgaon

4. Shri. Eknath Malji Patil
Age - 60 years, Occ - Agriculture

5. Sau. Pramilabai Eknath Patil,
Age - 46 years, Occ - Agriculture

Respondents No. 4 and 5 R/o Bhoras Khurd
Taluka - Chalisgaon, District - Jalgaon

6. Sulabai Lotan Patil
Age - 50 years, Occ - Agriculture
R/o Galan, Taluka - Pachora,
District - Jalgaon

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Mr. Amol S. Sawant, Advocate for the petitioner
Mr. L. V. Sangit h/f Mrs. M. L. Sangitr, Advocate for R-4 to 6

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 12th SEPTEMBER, 2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the appearing parties.

2. The petitioner, who is defendant No. 3 in Regular Civil Suit No. 51 of 2010 pending before Civil Judge, Junior Division, Chalisgaon, is before this court, since her application Exhibit-83 to allow her to cross-examine plaintiffs' witness has been rejected under the impugned order dated 20th February, 2015.

3. Learned advocate for the petitioner, Mr. Sawant submits that the petitioner may have admitted suit claim, however, she has right to cross-examine plaintiffs' witnesses and the court has gone about application Exhibit-83 cursorily getting drifted away by considerations which are not germane so far as rights of the petitioner to have cross-examination.

4. On the other hand, learned advocate, Mr. Sangit submits that while the petitioner has filed consenting written statement, petitioner cannot be termed as adverse party and, as such, cross-examination of plaintiffs' witnesses by a party who is not adverse would not be possible. He submits that in the circumstances, particularly having regard to the reasons which have weighed with the trial court while passing the impugned

order, writ petition may not be entertained.

5. It appears that despite service, respondents No. 1 and 3 plaintiffs have not put in appearance in the present writ petition indicating that they do not intend to oppose reliefs sought under the writ petition.

6. Learned advocate Mr. Sawant, additionally, in support of his submissions, refers to and relies on a decision of this court in the case of “*Mandabai Ramkrishna Tumsare and Others V/s Ramlal Hiranmanji Hiwarekar and Others*” reported in 1986 Mh.L.J. 643. He particularly points out paragraph No. 10 thereunder which is quoted hereinbelow for ready reference-

“ 10. In the circumstances of the present case, it is apparent that the plaintiff's case is fully supported by defendants 6 to 8. They are, therefore, not an adverse party to the plaint, but are proforma defendants through whom the plaintiff is claiming a right to the property. In a case like this, the evidence of the plaintiff having been recorded, it would be just and proper to ask the proforma defendants 6 to 8 to initially cross-examine the plaintiff and then direct the contesting defendants 1 to 5 to cross-examine the plaintiff. The reason is simple. For the administration of fair and just trial, it must be noted that the plaintiff's evidence, is cross-examined by the adverse party, may reveal certain lacunae which could be got corrected by the defendants supporting the plaintiff when they cross-examine the plaintiff subsequently inasmuch as they are interested in the claim of the plaintiff. By way of cross-examination, the supporting defendants can put leading questions

and get the necessary answers. It is for this purpose, to meet the ends of justice the trial court should permit the contesting defendants to cross-examine the plaintiff last, particularly when the adverse party so desires. Thus, if there are more than one defendant in a suit, the order of their cross-examination is a matter which rests on the discretion of the Judge. To put it in other words, cross-examination as defined in Section 137 of the Evidence Act is the examination of the witness by “adverse party” and the defendants who are supporting the plaintiff's case are not an adverse party. Therefore, their formal cross-examination should be brought on record and it is then the “contesting defendants”, which is the “real adverse party”, should be directed to cross-examine the plaintiff. ”

7. Having regard to aforesaid observations, it appears that the petitioner – defendant No. 3 is expected to formally cross-examine plaintiffs' witnesses without deviating from the pleadings in written statement, before cross-examination by adverse parties. Cross-examination of plaintiffs' witnesses by petitioner without deviating from petitioner's pleadings before cross-examination by adverse parties would have to be allowed.

8. In the circumstances, it appears to be expedient to grant the writ petition. Impugned order dated 20th February, 2015 passed by 2nd Joint Civil Judge, Junior Division, Chalisgaon is quashed and set aside. Application Exhibit-83 in Regular Civil Suit No. 51 of 2010 is allowed. Cross-examination of plaintiffs witnesses by petitioner without deviating from pleadings in her

written statement before cross examination by adverse parties
be allowed. Rule is made absolute accordingly.

9. Writ petition is disposed of.

Dinesh
Ramrao
Pawar

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signed by
Dinesh
Ramrao Pawar
Date:
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[SUNIL P. DESHMUKH, J.]