

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11383 OF 2017

SURYABHAN LINGRAM WANGE
VERSUS
SUMANBAI PATLOBA MUNDE AND OTHERS

...
Advocate for Petitioner : Mr. S.K. Naikwade h/f Mr. R.T. Deshmukh

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CORAM : V. K. JADHAV, J.
DATED : 7th FEBRUARY, 2018

PER COURT:-

1. Heard. I do not find any substance in this writ petition.
2. The petitioner-original defendant No.3, who happened to be the father of plaintiff has filed an application Exh. 183 seeking permission to cross examine the witnesses of defendant Nos. 1 and 2. Learned Judge of the trial court by the impugned order dated 27.06.2017 has rejected the said application Exh.183. Hence, this writ petition.
3. Respondent No.3-plaintiff has instituted the suit for setting aside the sale deed and for recovery of possession of the suit land and the petitioner herein, who happened to be original defendant No.3 has filed his consent written statement admitting the claim of the respondent-plaintiff in-to-to and further prayed to decree the suit as

prayed for. It thus appears that there is no clash of interest between the plaintiff and the petitioner-defendant No.3. It is well settled that if there is no clash of interest between the plaintiff and any of the defendants, then the cross examination by such defendants is impermissible. Similarly, in the instant case, there is no clash of interest between the plaintiff and petitioner-defendant No.3 and as such, the petitioner-defendant No.3 is not an adverse party within the meaning of sections 137 and 138 of Evidence Act. Consequently, the cross examination by the petitioner to the plaintiff's witness is impermissible so also the cross examination to the witness of defendant Nos. 1 and 2. The same is for the reason that the petitioner-defendant No.3 is not an adverse party and consequently in that way, he will try to fill up the lacunae since the plaintiff already cross examined the witness of defendant Nos. 1 and 2.

4. In view of above, I do not find any fault in the impugned order. The writ petition is devoid of merits. Writ petition is accordingly dismissed. No costs.

(V. K. JADHAV, J.)

rlj/