

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

WRIT PETITION NO.8999 OF 2018

**GHANSHYAM NAROTTAM DODIYA AND ANOTHER
VERSUS
YOGESH VIJAYKUMAR DOSHI AND ANOTHER**

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Advocate for the Petitioners : Smt. S. S. Kulkarni
Advocate for Respondent No.1 : Shri A. S. Patil h/f.
Shri S. S. Chapalgaonkar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 04th JANUARY, 2019.

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PER COURT :

1. The petitioners are original defendant Nos. 2 and 3 in Special Civil Suit No. 31/2013. Defendant No.1 is the husband of defendant No.3. Defendant No.2 has purchased the property from defendant Nos. 1 and 3. The plaintiff has preferred the suit for seeking a declaration that the sale-deed effected by defendant Nos. 1 and 3 with defendant No.2, are null and void. Further reliefs are sought *insofar* as the specific performance of contract between the plaintiff and defendant Nos. 1 and 3, is concerned.

2. The issue is that defendant No. 2 moved an application

Exhibit 116 seeking leave to cross-examine defendant No.1, before the plaintiff would commence the cross-examination. By the impugned order, the Trial Court has rejected Exhibit 116 for the reason that defendant Nos. 2 and 3 have filed a joint written statement. Neither defendant No.1 in his written statement has averred to the prejudice of defendant No.2, nor are any adversities pleaded by either of the defendants *vis-a-vis* each other. The Trial Court, therefore, observed that when neither of the defendants have created an adverse situation for each other, defendant No. 2 cannot be permitted to cross-examine defendant No.1.

3. The High Court of Punjab and Haryana has held in *Mohinder Singh Gill Vs. Jagdeep Singh and others in C.R. No. 4298/2012, decided on 27/11/2012* that if a defendant has made any adverse statement against a co-defendant, such a co-defendant can cross-examine the said defendant prior to the plaintiff cross-examining him.

4. The learned Advocate for the petitioners submits that if the plaintiff succeeds in acquiring any such statement from

defendant No.1 which would be adverse to the interest of defendant No.2, then defendant No.2 be permitted to cross-examine defendant No.1. The learned Advocate for the plaintiff is agreeable.

5. In view of the above, this petition is disposed off by observing that the plaintiff shall cross-examine defendant No.1 and if in such cross-examination, defendant No.1 makes any statement which would be adverse to the interest of defendant No.2, then defendant No. 2 can be permitted to cross-examine defendant No.1.

(RAVINDRA V. GHUGE, J.)

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