

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12301 OF 2016

Shri.Kisan Vitthal Kadam & Ors. ... **Petitioners**
Versus
Sou.Indumati Gahininath Vyavhare ... **Respondent**

.....
Ms.Rutuja Chakor i/b. Mr.Sachin B. Thorat, Advocate for the
Petitioners.

Mr.Purushottam G. Chavan, Advocate for the Respondent.

....

CORAM : A.M.BADAR J.

DATED : 14th NOVEMBER 2019.

P.C. :

1 This is a petition by defendants in a suit for partition and separate possession for challenging the Order below Exhibit 115 as well as Order below Exhibit 117.

2 Heard the learned Counsel appearing for the petitioners/defendants. She argued that for proving the case of defendants, it is necessary to cross-examine the plaintiff. The learned Counsel for the respondent/original plaintiff submits that on seven occasions, no-cross Orders were passed against the defendants and they are not interested in cross-examining the plaintiff.

3 I have considered the submissions so advanced and also perused the impugned Orders. It is seen that on several occasions, because of non-inclination on the part of defendants to cross-examine the plaintiff, who had filed her evidence affidavit on 19/07/2010, no-cross orders were passed. Those Orders were subsequently set aside. However, still the defendants did not complete the cross-examination. Ultimately, on 02/01/2016, the learned trial Court had finally passed Order closing cross-examination of the plaintiff. It is thus clear that six years time was granted by the learned trial Court to defendants to cross-examine the plaintiff. The learned trial Court has considered provisions of Order XVII Rule 1 of the Code of Civil Procedure while rejecting the application for adjournment.

4 No infirmity can be found in the impugned Order. It is neither illegal nor irrational. It does not suffer from procedural impropriety. The petition, as such, is devoid of merit and the same is, therefore, dismissed.

(A.M.BADAR, J.)