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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1738 OF 2021**

Shri Gurunath Jaywant Dabholkar

....Petitioner

V/s

Kathod Arjun Patil since deceased

Through his legal heirs

1) Shri Santosh K. Patil & Ors.

.....Respondents

Mr. Bhushan C. Joshi for the Petitioner.

Mrs. Prabha U. Badadare for Respondent No.4.

CORAM: NITIN W. SAMBRE, J.

DATE: FEBRUARY 03, 2022

P.C.:-

1] This Petition is by the Plaintiff, questioning the order passed below Exhibit-98 whereby Defendant No.4, Respondent herein, is granted permission to cross-examine the Plaintiff.

2] Submissions of learned Counsel Mr. Joshi appearing for the Petitioner are, as far as prayer clause (a) of the plaint is concerned, Petitioner/Plaintiff has not sought any relief against Defendant No.4 and that being so, said Defendant No.4, who is Respondent herein, cannot be permitted to cross-examine the Plaintiff's witness. Prayer clause (a) of the Plaint reads as under:-

“a) To declare that the Development Agreement dated 20.3.1997 executed by the Plaintiff and the father of the Defendant No.1 to 3 is not binding

on the Plaintiff.”

3] I am afraid, such contention cannot be accepted, as the Petitioner has made a specific prayer against Defendant No.4 by way of prayer clause (b) wherein, it is prayed that Defendant Nos. 1 to 4 be declared as a trespasser.

4] In the aforesaid backdrop and having regard to clarification in the Written Statement, in my opinion, order impugned granting an opportunity to Defendant No.4 to cross-examine Plaintiff’s witness is quite justified.

5] No case for interference is made out. Petition fails and same stands dismissed.

(NITIN W. SAMBRE, J.)