

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

WRIT PETITION NO. 13040 OF 2022

Bhujang Ganpatrao Kharat .. Petitioner

Versus

Latabai Angadrao Thorat
Since deceased through L.Rs.
Rajeshwari Rajendra Rupnar
and another .. Respondents

Shri Vasant D. Salunke, Advocate for the Petitioner.
Shri Shoyab Shaikh, Advocate for the Respondent Nos. 1-A to 1-D and 2.

**CORAM : SHARMILA U. DESHMUKH, J.
DATE : 28TH FEBRUARY, 2023.**

FINAL ORDER :

. Challenge in this petition is to the order dated 24th August, 2022 passed below Exhibit 66 in R.C.S. No. 26 of 2015 rejecting petitioner's application for setting aside no cross order passed on 05th July, 2022.

2. R.C.S. No. 26 of 2015 has been instituted by the respondents seeking partition and separate possession of the suit property. The application of the petitioner seeking to set aside no cross order has been rejected on the ground that sufficient opportunities were given to the petitioner to cross examine the plaintiffs, however, he has failed to do so. As such again an application has been made for setting aside no cross order.

3. Learned counsel appearing for the petitioner submits that this Court by order dated 20th December, 2022 had directed the petitioner to deposit an amount of Rs. 25,000/- in this Court, which has been complied with. It is also pointed out that by order of 07th September, 2022, the petitioner's evidence has been closed by the Trial Court.

4. Learned counsel appearing for the respondents opposes the petition and submits that by order of 09th January, 2018 earlier order of no cross passed on 01st November, 2017 has been set aside and inspite of ample opportunities being given, the petitioner is not pursuing the proceedings and has failed to cross examine the plaintiffs.

5. Considered the submissions of the learned counsel for parties.

6. The impugned order has the effect of closing the petitioner's opportunity of cross examination.

7. In my opinion, interest of justice will be sub served if the petitioner is permitted to cross examine the respondents subject to payment of cost of Rs. 25,000/-, which the petitioner has already deposited in this Court. The respondents are permitted to withdraw the said amount of Rs. 25,000/- deposited by the petitioner.

8. Considering that the proceedings are of the year 2015, the parties to appear before the Trial Court on 27th March, 2023. On the date, which will be fixed by the Trial Court, the petitioner to conduct the cross examination of the plaintiffs.

9. The writ petition stands allowed in the above terms. Considering that the proceedings pertain to partition and separate possession of the joint family property, the Trial Court is requested to decide the proceedings expeditiously and in any event within a period of one year from the date of this order.

[SHARMILA U. DESHMUKH, J.]

bsb/Feb. 23