

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

WRIT PETITION NO. 1066 OF 2023

Aniruddha Ramdas Bairagi
and another

.. Petitioners

Versus

Sundarabai Bhujang Pawar
and others

.. Respondents

Shri Yuvraj S. Choudhari, Advocate for the Petitioners.
Shri D. A. Mane, Advocate h/f Shri Pankaj A. Bharat for the
Respondent No. 5.

**CORAM : SHARMILA U. DESHMUKH, J.
DATE : 21ST FEBRUARY, 2023.**

FINAL ORDER :

. By this petition the challenge is to the order dated 10th November, 2022 passed by the Trial Court rejecting the petitioners' application for setting aside no cross order dated 28th July, 2016 passed below Exhibit 48.

2. R.C.S. No. 167 of 2017 was instituted by the respondent Nos. 1 to 4 against the petitioners and the respondent Nos. 5 and 6 herein inter alia for partition and for setting aside agreement of sale executed by the petitioners in favour of the respondent No. 5 herein.

3. Heard learned counsel appearing for the parties.

4. Learned counsel appearing for the petitioners submits that after R.C.S. No. 167 of 2017 was instituted, the respondent No. 5 herein who was original defendant No. 3 has filed Spl. C. S. No. 89 of 2016 seeking specific performance of agreement of sale. He would further submit that as the petitioners herein were not present at the time of hearing order of 'no cross' of the plaintiffs i. e. respondent Nos. 1 to 4 herein came to be passed. He would further submit that the right of cross examination is being deprived to the petitioners herein and pray that in the interest of justice the impugned order be quashed and set aside.

5. Per contra, learned counsel appearing for the respondent No. 5 submits that the stand of the petitioners is not adverse to that of the plaintiffs. He would therefore submit that no purpose is going to be achieved by cross examining the respondent Nos. 1 to 4. As such the impugned order has been rightly passed.

6. Considered the submissions of the learned counsel for respective parties and perused the papers with the assistance of learned counsel for the parties.

7. Perusal of the written statement shows that the petitioners herein are supporting the case of the plaintiffs as regards the partition and as regards setting aside agreement for sale executed by the petitioners herein in favour of the respondent No. 5. At this stage, it is necessary to consider the provisions of

the Indian Evidence Act regarding the cross examination. Sections 137 to 155 of the Indian Evidence Act deal with examination and cross examination of the parties. Considering the provisions of the Evidence Act, in order to give an opportunity of cross examination, it is necessarily to be shown that the stand of the party seeking cross examination is adverse to the party of whose cross examination is sought. Merely because the party has been impleaded as a defendant, the party cannot be styled as adverse party and unless it is shown that the stand of the defendant is adverse to that of plaintiffs, the right of cross examination cannot be exercised. It is to be further shown that the contesting party is disputing case of the plaintiffs. In the present case perusal of the written statement filed by the petitioners evidences that the petitioners are supporting case of the plaintiffs.

8. In the light of the above, there is no warrant for interference in the order dated 10th November, 2022. The Trial Court has rightly appreciated the provisions of Section 137 of the Indian Evidence Act and has rejected the application.

9. Writ petition is devoid of merits and same stands dismissed. No costs.

[SHARMILA U. DESHMUKH, J.]