

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5221 OF 2022

Mr. Hubert J Fonseca Since Decd.

Thr. His legal heirs.

....Petitioner

Versus

Smt. Fausta Sathyasilan

....Respondent

Mr. Piyush Raheja a/w Mr. Mihir kakade i/b Jayakar & Partners for
the Petitioner.

Mr. Atharva Dandekar a/w Ms. Akshata Naik for the Respondent.

CORAM : SHIVKUMAR DIGE, J.

DATE : 28 MARCH 2023.

P.C. :

1. Heard learned counsel for the petitioner and learned counsel for the respondent.
2. It is contention of the learned counsel for the petitioner that predecessor of petitioner had filed application of eviction against the respondent before the competent authority, during the pendency of that application predecessor of the petitioners expired. Thereafter, as a legal heir, petitioner stepped into the shoes of original applicant.

3. Learned counsel further submits that it is the case of the respondent before the competent authority that they had purchased the suit premises by way of agreement to sale from predecessor of the petitioner. The said document was produced before the competent authority by the respondent, inadvertently the advocate of petitioners' admitted the said documents. When petitioners wants to cross-examine the respondent on the said document the trial court has held that as document is admitted. Hence petitioner can not cross-examine the respondent on the said document, which is illegal. Hence, requested to allow the writ petition.

4. Learned counsel for the respondent submits that the prayer clause of the writ petition says about the execution of document and it does not says about right to cross-examination. The learned counsel further submits that once document exhibited then witness cannot be cross-examined on it. Hence, requested to dismiss the writ petition.

5. I have heard both learned counsel, perused impugned order, when respondent have come with the case that they have purchased the suit property. By way of agreement to sale then the petitioners have right to cross-examine the respondent witness on that point. Mere admission of document does not mean that other side

has ceased his right to cross-examine on that document.

6. In view of above, I pass following order.

ORDER

- i. Writ petition is partly allowed.
- ii. The petitioners are allowed to cross examine the respondent witness in respect of agreement of sale dated 1st April, 2014 as prayed in prayer clause D.
- iii. Writ petition is disposed of.
- iv. All contention of both the parties are kept open.

(SHIVKUMAR DIGE, J.)