



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8238 OF 2023

Salimunnisa Begum Mohd Ibrahim And Others
VERSUS
Momin Rubina Late Mohd Ibrahim And Another

- Mr. N. S. Muthiyan, Advocate for the Petitioners
- Mr. M. N. A. Shaikh, Advocate for the Respondents

CORAM : R.M. JOSHI, J
DATE : NOVEMBER 13, 2024

PER COURT :

1. This Petition takes exception to order dated 16.02.2023 passed in Civil M.A. No. 413/2021 whereby application filed by the Petitioners vide Exh. 29 for seeking permission to refer gift deed dated 02.11.2017 to the witnesses of the Applicant in the cross-examination came to be rejected.

2. Learned Counsel for the Petitioners submit that learned Trial Court has committed error in rejecting the application on the ground that document sought to be referred in the cross-examination was not produced before hand. According to him, Order VIII, Rule 1A(4), Civil Procedure Code provides thus:

(4) Nothing in this rule shall apply to documents-

(a) produced for the cross-examination of the plaintiffs witnesses, or

(b) handed over to a witness merely to refresh his memory.

3. By referring to the said provision, it is contended that there is no embargo in producing the document for that purpose of cross-examination of Plaintiff's witness.

4. Learned Counsel for the Respondents/Original Applicants opposed the Petition by contending that the application is filed for the purpose of reference of the gift deed and not for production of the gift deed.

5. Order VIII, Rule 1A mandates the Defendant to produce the documents upon which relief is claimed or relied upon by him, however, there is exception that a document can be produced in the cross-examination of Plaintiff's witness or it can be handed over to the witness merely to refresh his memory. It is thus clear

from the aforestated provision that there is no embargo for the Petitioners herein to refer any relevant document to the witness of the Plaintiff's during cross-examination. Needless to say that any document so referred will become part of the proceedings.

6. In view of the above discussion, Petition stands allowed in terms of prayer clause 'B'.

(R.M. JOSHI, J.)