



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10859 OF 2025

RAMESH HEMCHAND SHAH

.. Petitioner

(Orig. Defendant No.2)

VERSUS

1. SUREKHA SHARAD SHAH
2. ANUPAMA AJAY SHAH
3. KAMAL SUBHASH PATNI
4. AJAY NAVALROY SHAH
5. SATYAJIT NAVALROY SHAH
6. NIRUMAPA JITENDRA SHAH
7. ANURADHA NITIN LODHA

.. Respondents

(Respondent Nos.1 & 2 - Orig. Plaintiff
Nos. 1 & 2, Respondent Nos.3 to 7 -
Orig. Defendant Nos.1 & 3 to 6)

...

Advocate for the Petitioner : Subodh P. Shah
Advocate for Respondent No.1: Mr. S. V. Suryawanshi

...

CORAM : ARUN R. PEDNEKER, J.
Reserved On : 15.09.2025
Pronounced On : 19.11.2025

ORDER:

1. Heard.
2. In this petition petitioner is the original defendant no.2
and the contesting respondent no.1 is the original plaintiff no.1.

3. By the present petition, petitioner / defendant no.2 challenges the order dated 29.07.2025, below Exhibit-28, whereby the learned trial court stopped the petitioner / defendant no.2 from further cross-examining respondent no.1 / plaintiff no.1, on the contents of the document produced by the petitioner / defendant no.2, as such, the present writ petition.

4. Facts in brief are as under:

The plaintiffs have filed a suit for partition. The parties are *inter se* related. It is the case of the plaintiffs that the suit properties are joint family properties and not partitioned and prayed for partition and claimed their share to the extent of 1/6 share over the suit property.

The plaint is opposed by the defendant / petitioner by filing written statement. In the written statement the defendant has mentioned about document dated 17.03.1989, as under:

“प्रथम व्यवस्थेबाबत मथुराबाई यांनी ता. १७/०३/१९८९ रोजी झालेल्या कौटुंबिक व्यवस्थेचे टिप्पण चाळीसगाव येथे लिहून ठेवलेले होते व त्यावर त्यांनी त्यांची सही केलेली होती. वादातील दोन्ही मिळकतींचा ताबा या प्रतिवादीचाच असल्याने झालेल्या फेरकौटुंबिक व्यवस्थेबाबत कोणतेही टिप्पण मथुराबाई यांनी लिहून ठेवलेले नव्हते.”

5. It is stated that the said document is also annexed with the list of document along with the written statement. The document was produced in the cross-examination of the plaintiff,

where plaintiff no.1 was asked questions in cross-examination, relevant portion of which is noted at paragraph no.36, as under:

“३६...आता मला दि. १७.०३.१९८९ चे टाईप केलेले कागदपत्र दाखविले. त्यावर मथुराबाई हिची सही मराठीतून आहे हे म्हणणे खरे आहे. मथुराबाई १९९४ ला मयत झाल्यानंतर १९९५ ला तिच्या मिळकतीबाबत काय करायचे याबाबत रमेश शाह यांच्यासोबत चर्चा झाली होती या दाव्याबाबत मला काहीही माहित नसण्याचे कारण माझे पती सर्व पाहत होते. दि. १७.०३.१९८९ चे पत्र माझ्याकडे देखील आहे. ते पत्र आता मला दाखविण्यात आलेल्या पात्राप्रमाणेच आहे. त्यातील मजकूर माझ्याकडे असलेल्या पात्राप्रमाणेच आहे. (पत्रातील मजकुराविषयी प्रश्न विचारत असतांना वादीच्या वकीलांनी हरकत नोंदविली. पत्रातील मजकुराबाबत या साक्षीदाराला विचारता येणार नाही. हरकत मंजूर करण्यात येवून त्या मजकुराबाबत प्रश्न विचारण्यात येवू नये.)...”

Plaintiff No.1 answered few questions about the document as noted above. However, when the question was posed as regards the contents of the document, the learned Advocate for the plaintiff objected for the same and the the objection is allowed and the same is challenged in the present Writ Petition.

6. The petitioner challenges the order of the learned trial court, whereby the trial court had stopped the learned counsel for the petitioner / defendant no.2 from asking questions as regards the contents of the document in the cross-examination of respondent no.1 / plaintiff no.1.

7. The learned counsel for the petitioner / defendant no.2 submits that the document is already annexed with the written

statement and is produced along with the list of documents with the written statement. The contents of the same are also mentioned in the written statement, as such, there can be no stoppage of the cross-examination as regards the contents of the document. As such, the only relevant factor for consideration is, whether the document is relevant and submits that the learned trial Judge has committed error in not permitting the cross-examination as regards the contents of the document. As such, he submits that the order be set aside and the matter be remitted back for further cross-examination.

8. Per contra, the learned counsel appearing for respondent no.1 / original plaintiff no.1 submits that the original plaintiff is 78 years old lady. She has to travel from Chalisgaon to Dhule. It is stated that for 20 times the witness was present in the court and for 8 times the cross-examination was deferred. The witness examination is extended from August-2022 to August-2025.

9. The learned counsel appearing for respondent no.1 / original plaintiff no.1 submits that, in the event, this court permits the cross examination, the same should be concluded within one date as respondent no.1 / original plaintiff no.1 being a lady of 78

years of age and has appeared in the court on various dates and she travels from Chalisgaon to attend the court proceedings.

10. Considering the submissions, liberty is granted to the petitioner / defendant no.2 to cross examine the witness respondent no.1 / original plaintiff no.1. However, he has to conclude the cross-examination of the respondent no.1 / original plaintiff no.1 on the next date, when the witness appears. However, it is observed that the aspect of the validity of the document and proof of document will be considered by the trial Court at the stage of pronouncement of Judgment. Considering that respondent no.1 / original plaintiff no.1 is 78 years of age, the suit is directed to be decided within a period of one year from the date of production of this order. Parties to co-operate in concluding the trial.

11. With the above observations, the Writ Petition stands disposed of.

[ARUN R. PEDNEKER, J.]

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