

Jvs.

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

WRIT PETITION NO. 13390 OF 2024

JAYANT
VISHWANATH
SALUNKE

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JAYANT VISHWANATH
SALUNKE
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Waman Jagannath Durape, since } deceased, through Lrs. 1A Sunil } Waman Durape & Ors. }	Petitioners
versus	
Gorakh Pandurang Durape & Ors. }	Respondents

Mr. R. D. Phade for petitioners.

Mr. Niranjan Bhavake with Ms. Drishti Madhani, Ms. Swamini Thakur and Mr. Anurag Ramekar i/b. Bhavake and Associates for respondents 1 to 3.

Ms. Neha S. Bhide, Government Pleader with Ms. Shruti D. Vyas, Additional Government Pleader for respondents 4 to 6.

CORAM: ALOK ARADHE, C. J.

DATE: JULY 7, 2025

ORAL ORDER: (Per Chief Justice)

1. In this writ petition under Article 227 of the Constitution of India, the petitioners have challenged the validity of the order dated 4th July 2024 passed by Civil Judge, Senior Division, Malshiras, by which the Trial Court has rejected the application filed by the petitioners seeking permission to cross-examine Defendant No. 14, *inter alia*, on the ground that under section 138 of the Evidence Act, 1963, only a party pleading adverse case can be cross-examined.

2. Facts giving rise to filing of the writ petition, briefly stated, are that respondents 1 to 3/Plaintiffs have filed suit for declaration and perpetual injunction. In the aforesaid suit, Defendant Nos. 5 to 11 filed their written statements. Defendant No. 14 also filed the written statement supporting the case of Defendant Nos. 5 to 11. The Defendant Nos. 5 to 11 have adduced evidence and thereafter, Defendant No. 14, in his cross-examination, given statement adverse to the interest of the Defendant Nos. 5 to 11. The petitioners, therefore, filed an application seeking leave of the Court to cross-examine Defendant No. 14. The Trial Court, by the impugned order, has rejected the aforesaid prayer. Hence this petition.

3. Heard learned counsel for the parties at length.

4. In the written statement as well as in the examination-in-chief, Defendant No. 14 has supported the case of Defendant Nos. 5 to 11. Thus, Defendant No. 14 has not taken any plea which is adverse to the interest of Defendant Nos. 5 to 11. Therefore, it is not necessary for Defendant Nos. 5 to 11 to cross-examine the Defendant No. 14. The Trial Court has rightly exercised the jurisdiction vested in it. The impugned order does not suffer from any infirmity warranting interference of this Court.

5. With the aforesaid observations, the writ petition is dismissed.

(CHIEF JUSTICE)