

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5141 OF 2025

Kashinath Krishna Vaskar ... Petitioner

V/s.

Bhagirath Krishna Vaskar and Ors ... Respondents

Mr. Uday B. Nighot, for the petitioner.

Mr. Saurabh Butala, for the respondents.

CORAM : N.J. JAMADAR, J.

DATE : 23RD APRIL 2025.

PC:

1. Heard learned counsel for the parties.
2. The challenge in this petition is to an order passed by the learned Civil Judge, Belapur, whereby an application preferred by the petitioner/defendant no. 1 seeking permission to cross-examine the defendant nos. 1 and 2 and adduce evidence in defence came to be rejected.
3. The respondent no. 1/plaintiff is the brother of the petitioner. The Plaintiff has instituted the suit for a declaration that he and defendant nos. 1 to 7 are the joint owners of the suit plot, the plaintiff is entitled to 1/8th share in the suit plot being plot No. 23A,

admeasuring 325.625sq. mtrs., for partition and separate possession of the plaintiff's share therein and other incidental and consequential reliefs.

4. The material on record indicates that the defendant no. 1 did not cross-examine PW.1 and PW.2 though the advocate for the defendant no. 1 appeared before the Court. The Trial Court was, thus, constrained to pass 'no cross order' against the defendant no. 1. Eventually, the right of defendant no. 1 to lead evidence also came to be foreclosed.

5. The defendant no. 1 filed an application seeking permission to cross-examine PW.1 and PW.2 and adduce evidence contending, inter alia, that in the intervening period there were negotiations for the settlement of the dispute, the defendant no. 1 was given to understand that the matter would be amicably resolved and the plaintiff would withdraw the suit qua defendant no.1 and, therefore, the defendant no. 1 be permitted to cross-examine PW.1 and PW.2 and adduce the evidence, lest defendant no. 1 would suffer irreparable loss and prejudice.

6. The learned Judge was not persuaded to accede to the prayer of

the petitioner. Learned Judge, in terms, recorded that the reasons ascribed by the petitioner were not reasonable and convincing.

7. Mr. Nighot, learned counsel for the petitioner, submitted that material on record would indicate that the parties were negotiating as late as Against 2024 and the matter was posted before the Lok Adalat. In these circumstances, the defendant could not cross-examine PW.1 and PW. 2 and adduce the evidence. The defendant no .1 does not intend to delay the disposal of the suit, and if a reasonable opportunity is granted, the defendant no. 1 would cross-examine PW.1 and PW.2 and also adduce his own evidence.

8. Mr. Butala, learned counsel for the respondent No. 1/plaintiff, resisted the prayer to permit the defendant nos. 1 to cross-examine the PW.1 and PW. 2 and adduce the evidence. Taking the Court through the Roznama of the proceedings before the Trial Court, it was submitted that time and again efficacious opportunity was granted to the petitioner to cross-examine the PW.1 and PW.2. Though the advocate for the defendant no. 1 always remained present before the Trial Court, no steps were taken to cross-examine the PW.1 and PW.2 and even seek the setting aside of 'no cross-examination' order, till the matter came to be posted for judgment.

9. It was submitted that the defendant no. 1 had, in fact, not sought the relief of setting aside the no cross order passed against the defendant no. 1 qua PW.1 and PW.2. Since there were no prayers for setting aside 'no cross orders' in the application filed before the Trial Court and, consequently, no order has been passed thereon, the petitioner cannot be permitted to seek those reliefs in this petition.

10. I have perused the material on record. The relationship between the plaintiff and defendant no. 1 is not dispute. It appears that there were multiple efforts to amicably resolve the disputes between the parties, having regard to the nature of the relationship between the parties.

11. Indeed the Roznama of the proceedings indicates that multiple opportunities were given to the defendant to cross-examine the PW.1 and PW.2. At the same time, it appears that in the month of August 2024, after the matter was argued, with the consent of the parties, the suit was again listed before the Lok Adalat to explore the possibility of an amicable settlement of the dispute. That underscores the fact that the parties were in the process of negotiation till the month of August 2024. This factor lends heft to the submission on behalf of the petitioner that as the parties were negotiating, the petitioner was

under an impression that the matter would be amicably resolved.

12. In my view, the fact that the petitioner had not sought relief of setting aside of 'no cross order' need not be given undue weight. The substance of the relief prayed for by the petitioner in the application is required to be seen. The petitioner had specifically sought permission to cross-examine PW.1 and the other witnesses and adduce his evidence.

13. In the totality of the circumstances, it would be expedient in the interest of justice that the petitioner/defendant No.1 is provided an opportunity to cross-examine PW.1 and PW.2 and adduce his evidence. Since an apprehension is expressed that the exercise is driven by a design to further delay the disposal of the suit, this Court considers it appropriate to put conditions subject to which the petitioner can cross-examine PW.1 and PW.2 and also adduce his evidence. Hence the following order:

ORDER

- i) The Writ Petition stands allowed.
- ii) The impugned order dated 28th April 2025 stands quashed and set aside.

iii) Application (Exhibit-93) stands partly allowed in the following terms.

- a) The petitioner /defendant no. 1 is permitted to cross-examine the PW.1 and PW.2.
- b) The petitioner shall complete the cross-examination of PW.1 and PW.2 in two Sessions each, in the maximum.
- c) The petitioner is permitted to adduce his evidence.
- d) The petitioner shall file an affidavit in lieu of examination-in-chief, affidavit of documents and compilation of documents within a period of three weeks from the date of conclusion of cross-examination of P.W.1 and P.W.2.
- f) The petitioner / defendant no. 1 shall not seek any adjournment either for cross-examination of PW.1 and PW.2 or for adducing his evidence.
- g) The petitioner /defendant no. 1 shall present himself for cross-examination. If the defendant no. 1 does not present himself for cross-examination after filing the affidavit of examination-in-chief, the evidence of Defendant No.1 shall be liable to be discarded.
- h) The trial in Suit No. 340 of 2016 stands expedited.
- i) The petitioner / defendant no. 1 shall pay costs of Rs. 25,000/- to the respondent no. 1/plaintiff within a period

of two weeks from the date of uploading of this order.

j) The payment of costs shall be condition precedent and in the event of default in payment of costs, this order shall stand recalled and the application preferred by the petitioner (Exhibit-93) stand dismissed.

(N.J. JAMADAR, J)