

**ORDER BELOW EXH.52**

By this application. Defendant No. 2 and 3 prays for allow to them for cross-examination of defendant No.1. This is suit for partition and perpetual injunction.

2. Defendant No. 2 and 3 contended that, the evidence of plaintiff as well as defendant No. 2 and 3 is completed . Now at Exh. 51 defendant No.1 filed his affidavit examination in chief and the suit is kept for cross-examination of defendant No.1. He further contended that, the plaintiff and defendant No. 1 with collusion with each other filed this suit. The intention of plaintiff and defendant No. 1 is to grab the land bearing Gut No. 139/11 adm. 41 R. He further submitted that, to find-out truth the cross-examination of defendant No. 1 by defendant No. 2 and 3 is necessary. Hence, prayed for allow this application.

3. On the back leaf of application plaintiff has filed his say and contended that, the application is illegal and wrong in the eyes of the law. The citation on which defendant No. 2 and 3 is relied is not applicable to this suit. Hence, prayed to reject this application with costs. Defendant No.1 filed his say at Exh.53. He contended that, he is not cooperate with plaintiffs. The allegation and contents of application

are false. Hence, he prayed to reject application with costs.

4. Heard both parties. Perused record and roznama. Read application and say. This is suit for partition and perpetual injunction. In which evidence of plaintiff and defendant No. 2 and 3 is completed. After that, defendant No.1 filed his examination in chief affidavit at Exh. 51. Defendant No. 2 and 3 in support of his application and argument relied upon judgment of Hon'ble The Bombay High Court, Bench at Aurangabad **Vinod Khimji Lodaya Vs. Muljibhai Maujibhai Patel and ors, 2013 (4) Bom. C.R. 487**. He argued that, the plaintiff and defendant No.1 are with collusion filed this suit. If court permitted to take cross-examination of defendant No.1 it would not prejudice to any party. Moreover, it is helpful to the court find out truth and cross-examination assist court in arriving just and proper conclusion.

5. I go through the citation filed by the defendant No. 2 and 3, in which the question raised before Hon'ble High court about cross-examination by co-defendant is permissible or not. In which Hon'ble High Court held that, if where the defendant demonstrate that, the co defendant evidence could adversely affect his interest, cross-examination of such co defendant is permissible. Therefore, with due respect the above cited judgment is applicable to this suit.

6. Considering all above facts, the suit is for partition, in the suit of partition every defendant has plaintiff and every defendant has the plaintiff. Moreover, the defendant No. 2 and 3 clearly submit that, the plaintiff and defendant No. 1 is came into the court with collusion. The evidence of plaintiff and defendant No. 2 and 3 is completed. Therefore, the interest of defendant No. 2 and 3 definitely adversely affect if opportunity to cross examination would be denied. If permission is given to take cross-examination no prejudice would be caused to plaintiff as well as defendant No.1. otherwise it would definitely helpful to the court to find out truth and assist to this court in arriving just and proper conclusion. Due to this application no any hurdle caused to plaintiff as well as defendant No.1. therefore, it is appropriate to not impose costs while allowing this application. Hence, pass following order.

**ORDER**

1. Application Exh. 52 is allowed.
2. Permission is granted to take cross-examination of defendant No.1 by defendant No. 2 and 3.

sd/-

(Dhananjay S.Deore )

Date :12/01/2024.

Jt. Civil Judge Junior Div.,Phulambari

**CERTIFICATE**

I affirm that the contents of this P.D.F. File order are same, word to word, as per the original order.

Name of the Stenographer Court	:- S. D. Chavan Jt. CJJD & JMFC Phulambri
Date order signed by the Presiding Officer on	:- 12/01/2024. 12/01/2024.
order uploaded on	:- 12/01/2024.