

MHJN020000171990



Special Civil Suit No.70/1990  
Sulochana Bhakt & Ors. V/s.  
Durgadevi Agrawal & Ors.  
CNRMHJN020000171990

**Order below Exh.351**

This is an application filed by the defendant No.1 L.R's and defendant No.7 that defendant No.2 to 5 may not be permitted to cross examine the defendant No.1 L.R's witness Dipa Agrawal. According to the defendant No.1 L.R's the defendant No.2 to 5 have adopted the cross examination of PW-1 vide Exh.310 and also adopted the cross examination of PW-2 to 5. The defendant No.2 to 5 have already adopted the cross examination of the defendant No.1 L.R's and defendant No.7. Now, they have no legal right to cross examine witness DW-1 Dipa Agrawal. The specific suggestions are given to PW-1 to PW-5 in their cross examination for the defendant No.1 L.R's and defendant No.7. Therefore, the present application is filed.

2. The defendant No.2 to 5 resisted the application by filing say on the application itself. They denied all the adverse averments in the application. According to them, the cross examination of the plaintiff witnesses for the defendant No.1 L.R's and defendant No.7 is adopted to avoid repetition of cross examination. The DW-1 witness Dipa in her evidence made averments against the rights of the defendant No.2 to 5 as she denied joint possession and legal heirship of the defendant No.2 to 5.

3. The defendant No.2 to 5 have right to cross examination of DW-1 Dipa as she denied the contentions of the defendant No.2 to 5 in

their written statement. The defendant No.2 to 5 have not waived their right to cross examine the witness of the defendant No.1 L.R's though the cross examination of the plaintiff witnesses for the defendant No.1 L.R's and defendant No.7 is adopted by the defendant No.2 to 5. They have right to cross examine the witnesses of the defendant No.1 L.R's to protect the rights of the defendant No.2 to 5. The application is not tenable in the eyes of law. Therefore, the application is liable to be rejected.

4. Heard the learned advocate Shri. S. E. Siddiqui for the defendant No.1 L.R's. and defendant No.7 and the learned advocate Shri. N. S. Aljar Jain for the defendant No.2 to 5. I have gone through the record.

5. The defendant No.1 L.R's witness Dipa Agrawal filed her affidavit of evidence on record. The defendant No.2 to 5 wants to cross examine DW-1 Dipa Agrawal though they have adopted the cross examination of the plaintiff witnesses by filing adoption pursis. Now, the defendant No.2 to 5 have no legal right to cross examination of the witness DW-1 as they have already adopted the cross examination of the plaintiff witnesses for the defendant No.1 L.R's and the defendant No.7. The specific suggestions are given in the cross examination for the defendant No.1 L.R's and defendant No.7. The learned advocate for the defendant No.1 L.R's and defendant No.7 brought to the notice that the defendant No.2 to 5 have not reserved their right to cross examine the defendant No.1 L.R's and defendant No.7 witnesses by adoption of particular portion of his cross examination of the plaintiff witnesses for

the defendant No.1 L.R's and the defendant No.7.

6. According to the defendant No.2 to 5, they have right to cross examine DW-1 Dipa Agrawal as she has made averments against the rights of the said defendants by denying the joint possession and legal heirship of defendant No.2 in her affidavit of evidence. The defendant No.2 to 5 wants to cross examine DW-1 only in respect of the averments against their rights in her affidavit of evidence. They have right to cross examine DW-1 even though they filed adoption pursis of cross examination of the plaintiff witnesses made by the defendant No.1 L.R's and defendant No.7.

7. I have gone through the record particularly the affidavit of evidence of the plaintiff, his witnesses and the cross examination adoption pursis filed by the learned advocate for the defendant No.2 to 5. It is a matter of fact on record that the learned advocate for the defendant No.2 to 5 have adopted the cross examination of plaintiff and his witnesses for the defendant No.1 L.R's and the defendant No.7. Even though the defendant No.2 to 5 have resisted the suit by filing their written statement, they are not prevented by any one to cross examine the plaintiff and his witnesses. Therefore, in the peculiar circumstances, the defendant No.2 to 5 cannot cross examine DW-1 in the event of adoption of cross examination of plaintiff and his witnesses for the defendant No.1 L.R's and the defendant No.7 by the defendant No.2 to 5. Grant of permission to the defendant No.2 to 5 to cross examine the DW-1 would certainly cause prejudice to the defendant No.1 L.R's and the defendant No.7 as per their defence in their written

statement. Therefore, the application is allowed with no order as to costs.

**Order**

1. The application Exh.351 is allowed with no order as to costs.
2. In the result, the defendant No.2 to 5 are not permitted to cross examine the witness of DW-1 due to adoption pursis of cross examination of plaintiff and his witnesses for the defendant No.1 L.R's and defendant No.7 by them.

Date : 15.03.2023.

(N. L. Yeolekar)  
Civil Judge S. D.,  
Jalna

**CERTIFICATE**

I affirm that the contents of this PDF file are word to word as per original order.

Name of Steno : M. D. Adhe  
Name of Court : Civil Judge S. D., Jalna  
Date of PDF : 15.03.2023

Sd/-  
M. D. Adhe  
Stenographer Grade-3