

ORDER BELOW EXH. 111 IN R.C.S. No.50/2012.
PASSED ON 13/06/2017
(Ashok Naikvadi Vs. Bhagubai Naikvadi.)

This is application filed by defendant No.6 for setting aside no cross order dtd.14/10/2016.

2] Perused application and say filed by plaintiff below Exh.112. Heard, Ld. Adv. For both parties.

3] It is submitted on behalf of defendant No.6 the present suit is instituted for partition and separate possession and other consequential reliefs. Defendant filed written statement below Exh.41. Affidavit of evidence of plaintiff's witness is filed below Exh.100. The matter was kept for cross examination of defendant No.6. However, since the defendant No.6 is a woman and she could not appear before the Court due to her domestic need. Therefore, the Ld. Adv. could not conduct the cross examination. Hence he prayed that setting aside no cross order dtd.18/10/16 be set aside.

4] On the contrary it is submitted by plaintiff that so many opportunities were given to the defendant No.6. However, her Ld. Adv. was absent and therefore no cross examination was conducted. It is further submitted that affidavit of witness Santosh Ganpati Jamdade in respect of Gat No.3541 and 484/6, 484/8. He is witness on agreement to sell dtd.10/07/2009 and therefore defendant No.6 is no concerned with the said witness. No harm will cause to the defendant No.6 and therefore it is submitted that there is no need to set aside the said no cross order.

5] On perusal of record it appears that the said witness is examined in respect of agreement to sell dtd.25/5/2004. He is attesting witness to agreement to sell. He does not depose anything about the

previous partition and interest of parties therein. He just has come before the Court to state fact about the said agreement to sell and what he deposed that he was present for the said agreement to sell. Defendant No.6 is nowhere concerned to the suit properties. He is purchaser of joint family properties, as alleged by the parties. Therefore, when the defendant No.6 is not concern with that agreement to sell. If he is not concerned with those properties and that agreement to sell there is no relevance of the defendant No.6 with that witness and if it is so there is no need to give the opportunity to the defendant No.6 to cross examine the said witness.

6] Secondly, already sufficient opportunities were given to the defendant No.6 however he failed to conduct the cross-examine. Considering the nature of suit it would not be proper to set aside the order. Hence, I pass the following order-

ORDER

1. Application is rejected.
2. Cost in cause.
3. Parties to take note.

Date :- 13/06/2017

**(Jaydip G. Pande)
Jt.Civil Judge Junior Division,
Wai.**