

ORDER BELOW EXH. 74.

(Passed on 04/01/2025)

The defendant no.2 prayed for permission to cross-examine the defendant no.4. Read application and say filed by learned counsel for plaintiff. Heard learned counsel Shri. Kashyap for the defendant no.2 and learned counsel Shri. Petkar for the plaintiff.

02. The learned counsel for the defendant no.2 vehemently submitted that the defendant no.4 is supporting with the case of the plaintiff, hence his evidence is adverse to the defendant no.2. Therefore, the defendant no.2 be permitted to cross-examine the defendant no.4. On the contrary, the learned counsel for plaintiff also vehemently submitted that the defendant no.2 & 3 have no legal right to cross-examine the defendant no.4. Hence, the application is not tenable in eye of law. The learned counsel for the defendant no.2 also relied on **Vinod S/O Khimji Lodaya vs Muljibhai S/O Maujibhai Patel** dated 25.06.2013, wherein the Hon'ble parent High Court emphasized that *in appropriate cases, where the defendant demonstrates that the co-defendant's evidence would adversely affect his interest, cross-examination of such co-defendant is permissible*. The learned counsel for the defendant no.2 further relied on **Suresh Kumar Vs Zakir Hussain**, dated 08.08.2024, wherein the Hon'ble Madhya Pradesh High Court held that *no evidence should be received against one who had no opportunity of testing it by cross-examination, as it would be unjust and unsafe not to allow a co-accused or co-defendant to cross-examine a witness called by one whose case was adverse to his,*

or who has given evidence against.

03. The suit is filed to declare the partition deed is illegal and not binding upon the plaintiff. The plaintiff further prayed to declare Gift deeds executed by the defendant no.1 in favour of defendant no.2 & 3 are illegal and not binding against plaintiff. The plaintiff further prayed for injunction to restrain from disturbing his possession. The defendant no.4 and 5 filed written statement Exh.23 admitting the prayer clause in the suit. The defendant no.2 also adduced evidence on his behalf. The suit is pending for evidence on other defendants. The defendant no.4 filed evidence on affidavit below Exh.73. The evidence of the plaintiff and the defendant no.4 is adverse to the defendant no.2. Therefore, in context of the above said authorities cited by learned counsel for the defendant no.2, it is necessary to permit the defendant no.2 to cross-examine the defendant no.4 after cross-examination, if any, by the plaintiff. Hence following order-

ORDER

- 1) The application Exh. 74 is allowed.
- 2) The defendant no.2 is permitted to cross-examine the defendant no.4.

Order dictated and pronounced in open Court.

Seloo.
04/01/2025.

(V. M. Bansod)
Civil Judge Jr. Division,
Seloo.