

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

WRIT PETITION NO.4609 OF 2011.

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| Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders | Court's or Judge's orders |
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Mr.B.S.Shinde, advocate for the
petitioner.
Mr.A.S.Bayas, advocate for Respondent
Nos.1 to 7.

CORAM : S.V.GANGAPURWALA, J.

Date : 30.08.2011.

1. Heard.
2. The present petitioner is the original plaintiff who had filed a suit for declaration, partition and separate possession. The plaintiff examined herself She was also cross-examined. Thereafter, the present petitioner filed an application seeking reexamination of the plaintiff on the ground that some of the questions asked were ambiguous and not clear and in view of that re-examination is necessary. The said application is rejected. Aggrieved thereby, the present

petition is filed.

3. Mr. Balaji Shinde, learned counsel for the petitioner submits that the questions asked to the plaintiff in the cross-examination conducted on 20.2.2011 by defendant Nos. 1 to 5 were ambiguous, more particularly, appearing at page 35 of the present petition (2nd para). As the questions were ambiguous, the witness could not understand the same and the reply also is ambiguous. To clarify the same re-examination of the plaintiff is necessary. The learned counsel relies on the judgment of the Apex Court in a case of **"Rammi @ Rameshwar etc. Vs. State of Madhya Pradesh"** reported in **AIR 1999 Supreme Court 3544** and submits that the re-examination can not be confined to clarification of ambiguities which have been brought down in cross-examination. Even if a party feels that explanation is required for any matter referred to in cross-examination, he has liberty to put any question in re-examination to get explanation. In view of that the learned counsel submits that the trial Court committed an error while rejecting the

said application.

4. With the assistance of the learned counsel for the respective parties, I have gone through the order. On going through the said part of the cross-examination which according to the petitioner is ambiguous. I find that the answers were given by the witness about the shares. The whole evidence has to be taken into consideration. In the present case the application was submitted not immediately after the said cross-examination was over but was submitted much thereafter i.e. on 20.3.2011 and the said part of the cross-examination which the petitioner claims to be ambiguous was completed on 18.1.2011.

5. The trial Court while rejecting the said application has considered all the aspects of the matter. The evidence was recorded before the said Court who decided the application and the Court has narrated about the questions put and the answers given. The judgment of the Apex Court in a case of "**Rammi @ Rameshwar etc. Vs. State of Madhya Pradesh**" referred supra of

any assistance to the petitioners, in light of the facts of the present case.

6. At this stage, Mr.Shinde, learned counsel for the petitioner submits that the petitioner can also avail the provisions of Order 18 Rule 17 of the C.P.C. for recalling of the witness. The petitioner is at liberty to file such application which the Court would consider on its own merits.

7. The Writ Petition is accordingly dismissed. However, there shall be no order as costs.

(S.V.GANGAPURWALA,J.)

Dt.30.08.2011.
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