

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7059 OF 2025

Sukhdeo Pandurang Nalawade

VERSUS

Pandurang Chouthmal And Others

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Advocate for Petitioner : Mr. A.P. Bhandari

CORAM : S. G. CHAPALGAONKAR, J.

Dated : June 13, 2025

ORDER :-

1. Petitioner impugns the order dated 2.5.2025 passed by the learned Civil Judge, Junior Division, Kannad below Exhibit-106 in Regular Civil Suit No. 207 of 2014, by which petitioner's prayer seeking permission to lead additional evidence is declined.

2. Petitioner is original plaintiff in R.C.S. No.207 of 2014. Dispute pertains to Municipal House no.328/2 admeasuring 37.63 sq.meters. Suit is instituted on the ground that respondents/defendants are obstructing peaceful possession of plaintiff over the suit property. Respondents no.2 to 6 contested claim by filing written statement so also filed a counter-claim on the basis of sale-deed executed by petitioner. Petitioner in his written statement to counter-claim denied

sale-deed alleged to have been executed by petitioner in favour of Mr. Sahebrao Gaikwad. Considering rival contentions, issues were framed in the suit as well as counter claim. Petitioner after recording his evidence filed evidence close purshis on 3.10.2022. Thereafter, defendants recorded evidence of stamp vendor and scribe of sale-deed. As such, sale-deed is admitted in evidence at Exhibit-104.

3. At this stage, petitioner filed an application below Exhibit-106 contending that petitioner has denied execution of sale-deed Exhibit 104. Since, plaintiff was under impression that both attesting witnesses are no more, he could not examine them. However, after closure of evidence of defendant no.2, it is revealed that one of the attesting witness i.e. Jagannath Gaikwad is alive and can depose before the Court. Therefore, petitioner prayed for permission to lead additional evidence of attesting witness. Aforesaid application was opposed by defendants by filing say, eventually, learned Trial Court rejected said application.

4. Mr. Bhandari, learned advocate appearing for the petitioner would submit that thrust of defendants' case is on the sale-deed Exhibit-104, execution of which has been

specifically denied by plaintiff. Said document is admitted in evidence only on the basis of evidence of scribe and stamp vendor. Plaintiff was not aware about status of attesting witness, therefore, he could not take steps to bring such evidence during his term. According to Mr. Bhandari, examination of aforesaid witness is necessary for effective adjudication of the dispute.

5. Perusal of the impugned order clearly shows that evidence of plaintiff was closed on 3.10.2022. Thereafter, defendants recorded their evidence and closed the same. Present application seeking permission to lead additional evidence is filed on 23.10.2024. It can be observed that defence put forth in written statement clearly take stand that plaintiff has executed sale-deed placed at Exhibit 104. As such, plaintiff was well aware about contentions of defendants relying on the sale-deed. Accordingly, issues were framed and plaintiff recorded his evidence. He had every opportunity to bring necessary evidence before filing evidence close purshis, however, present application is moved when defendants closed their evidence and matter reached at the final stage.

6. Although, Mr. Bhandari relies upon observations of the Hon'ble Supreme Court in case of **K.K. Velusamy Vs. N.Palanisamy reported in (2011) 11 Supreme Court Cases 275**, to contend that Court has ample powers under section 151 of the Civil Procedure Code to permit recording of additional evidence, the discretion will have to be exercised by the Courts considering facts and circumstances of each case. In present case, plaintiff had ample opportunity to bring evidence to prove his case while recording evidence. Present application appears to have been belatedly filed. No good reasons are made out for permitting him to lead additional evidence. In that view of the matter, discretion exercised by the Trial Court while refusing permission cannot be faulted. No case is made out to exercise writ jurisdiction of this Court under Article 227 of the Constitution of India. In the result, there is no merit in this writ petition. Writ Petition stands **dismissed**. No costs.

(S. G. CHAPALGAONKAR)
Judge

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