

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.11741 OF 2025**

1. Sunildutt Baburao Kalloli
Age 56 yrs Occ. Agriculture & Business
2. Sushila Baburao Kalloli
Age 75 yrs Occ. Housewife
Both R/O Village Hidadugi
Tal. Gadhinglaj Dist Kolhapur

..Petitioners
(Org. Defendants)

Versus

1. Shobha Chandrakant Kalloli
Age 58 Occ. Housewife
2. Rajaram Annappa Kalloli
Age 61 Occ. Agri. And Service
3. Basavva Shivappa Kalloli
(Since Deceased Through L Rs)
- 3A. Suresh Shivappa Kalloli
Age 59 Occ. Agri
- 3B. Basavraj Shivappa Kalloli
Age 54 Occ. Agri
- 3C. Ramesh Shivappa Kalloli
Age 51 Occ. Agri
Since Deceased Through LRs
1. Mahadevi Ramesh Kalloli
Age 40 Occ. Housewife.
2. Shivchandra Ramesh Kalloli
Age 20 Occ. Education.
3. Shivani Ramesh Kalloli
Age 21 Occ. Household
All R/O Village Hidadugi Tal. Gadhinglaj
Dist Kolhapur

..Respondents
(Org. Plaintiffs)

...

Mr. N. A. Vankudre h/f Mr. Shashank C. Mangle a/w Mr. Shravan H. Sul, Advocate for Petitioners.

Mr. Raviraj Birje a/w Mr. Yogesh Sawant, Advocate for Respondents.

...

CORAM : S. G. CHAPALGAONKAR, J.
DATED : 28th NOVEMBER, 2025.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties, matter is taken up for final hearing at admission stage.
2. The petitioners/defendants takes exception to orders dated 04.09.2025 and 23.09.2025 passed by Civil Judge Junior Division, Gadhinglaj below Exhibits-100 and 204 respectively in Regular Civil Suit No.169/2022.
3. The respondent nos.1 to 3 instituted Regular Civil Suit No.169/2022 seeking relief of declaration of ownership by adverse possession against present petitioners. The petitioners refuted plaintiffs' claim. The Trial Court framed issues. On 18.08.2025, evidence of respondents is closed. At this stage, they moved an application below Exhibit-100 seeking direction against petitioners to produce document dated 11.02.1988. The petitioners opposed said application contending that such document is not in existence. However, Trial Court allowed application vide impugned order and directed petitioners to produce document dated 11.02.1988.
4. Mr. Vankudre, learned Advocate appearing for petitioners would submit that petitioners in paragraph no.12 of written statement specifically denied execution of document dated 11.02.1988 or signature of Baburao on such document. Even during course of

evidence, when plaintiffs made an attempt to refer xerox copy of document, petitioners had raised objection and same was not admitted in evidence. He would further submit that application Exhibit-100 alleges that original document is in possession of petitioner no.1. In reply to said application, petitioners have clarified that such document is not in existence. In this backdrop, Trial Court could not have directed petitioners to produce document.

5. Per contra, Mr. Raviraj Birje, learned Advocate appearing for respondents would submit that application below Exhibit-100 was composite application having self-contained notice to produce document under Section 66 of Indian Evidence Act and also invoked Court's power under Order 11 Rules 12 and 14 of Code of Civil Procedure to compel discovery and production of document. According to him, there is no procedural lacuna in impugned order. He would submit that defendants could have filed affidavit in Form No.5 denying possession of document that would have facilitated petitioners to lead secondary evidence on the basis of xerox copy in their possession.

6. The perusal of application Exhibit-100 suggests that respondents claimed that document dated 11.02.1988 is likely in possession of petitioner no.1, hence, sought direction to produce same. In response, petitioners specifically replied reiterating specific stand in written statement that such document is not in existence.

7. In light of aforesaid factual aspects, Trial Court giving reference to Section 66 of Indian Evidence Act directed petitioners to produce document. Section 65 of Indian Evidence Act prescribes that secondary evidence relating to document may be given when original is shown or appears to be in possession or power of person against whom document is sought to be proved. Section 66 provides that secondary evidence of contents of documents referred in Section 65, clause (a), shall not be given unless party proposing to give such secondary evidence has previously given to party in whose possession or power document is. Such notice can be dispensed with in the cases enumerated in Clause Nos.1 to 6 of Section 66. Order XI of Code of Civil Procedure deals with discovery and inspection of document. Rule 12 deals with application for discovery of documents and stipulates that any party may, without filing any affidavit, apply to Court for an order directing any other party to any suit to make discovery on oath of documents which are or have been in his possession or power, relating to any matter in question therein. Rule 13 provides that party against whom order for discovery of document is passed can file affidavit containing his objection to produce it in Form No.5 in Appendix C. If aforesaid procedure is considered in light of provisions of Sections 65 and 66 of Indian Evidence Act, it can be observed that there must be specific assertion by party seeking production that such a document is in possession of party against whom discovery is sought.

8. In present case, respondents are not sure that document is in possession of petitioners. It is specific case of respondents that it was document between Annappa Basappa Kalloli and Baburao Basappa Kalloli. It is not case of respondents that original document put in possession of petitioners. At no point of time, petitioners were served with notice to produce document. The Trial Court directly passed order below Exhibit-100 observing that there is possibility that such document is in possession of defendants. In fact, in such case, it was necessary to issue notice for production of document to petitioners and subject to their reply affidavit, further orders could have been passed. In present case, impugned orders are passed ignoring procedure contemplated under law. The Trial Court has fell error of procedural mandate. In result, impugned order is unsustainable. Hence, following order:

ORDER

- a. Writ Petition is allowed.
- b. The impugned orders dated 04.09.2025 and 23.09.2025 passed by Civil Judge Junior Division, Gadhinglaj below Exhibits-100 and 204 respectively in Regular Civil Suit No.169/2022, are hereby quashed and set aside.

- c. Needless to state here that, respondents shall be at liberty to take appropriate steps as per law in their endeavours to bring secondary evidence or seek discovery of document.
- d. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE