

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.8059 OF 2025**

1. Smt. Sumitra Madhavrao Ghodake
Age: 53 years, Occ: Housewife
 2. Shri. Rajesh Madhavrao Ghodake
Age: 33 years, Occ: Business
Both R/at: Sumadhav Chaya, Co-op.
Housing Society, Sagar mala, E- ward,
Kolhapur.
- ..Petitioners
(Original Defendant Nos.1 and 2)

Versus

1. Smt.Namruta Pasha Shaikh
Age: 52 years, Occ: Business
R/at: 117, Asamnagar, Varsova, Andheri,
Mumbai
 2. Shahista Pasha Shaikh
After Marriage- Shahista Imran Khan
Age: 34 years, Occ: Housewife
R/at: 315, New Jersey, United States of
America
 3. Shri. Elias Pasha Khan
Age: 30 years, Occ: Business
R/at: Brahnag Court, Court R. C. 30,
2-QX (United Kingdom)
On behalf of Respondent No. 1 and 3
Power of Attorney holder:
Shri. Pasha Mohammad Khan
Age: 55 years, Occ: Business
R/at: Land bearing No. 445/2, Katyani
Park, Kalambetarf Thane, Tal: Karvir,
Dist: Kolhapur
- ..Respondents
(Original Plaintiffs No.1 to 4)

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Mr. Drupad S. Patil a/w Mr. Amey V. Mahajan, Advocate for Petitioners.
Mr. K. K. Sasavade a/w Mr. R. K. Sasavade a/w Mr. Satyajit S. Patil,
Advocate for Respondents.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 22nd DECEMBER, 2025.**

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties,
matter is taken up for final hearing at admission stage.

2. The present Writ Petition takes exception to order dated 11.06.2025 passed by Civil Judge Senior Division, Kolhapur below Exhibit-284 in Regular Civil Suit No.2002/2012, by which application filed by petitioners/defendant nos.1 and 2 seeking permission to recall plaintiffs' witness has been declined.

3. It is contention of petitioners that respondents have instituted suit for declaration and removal of encroachment. In year 1995 respondents had filed Special Civil Suit No.140/1995 for partition and separate possession of property purchased jointly with defendants. The suit was disposed of as per consent terms and map annexed thereto. The map was prepared on the basis of measurement map supplied by Survey Department. As per consent terms, 12 feet wide internal road was carved out and portion of land on Western side of said road was allotted to defendants. According to petitioners, as per map attached to consent term, on Western side of 12 feet road, some portion of land exists, which is part of Gut No.445. The 12 feet road as per consent term was numbered as Gut no.445/1 and balance of land was numbered as Gut no.445/2. However, plaintiffs filed Regular Civil Suit No.2002/2012 only with intention to harass defendants contending that defendants have changed alignment of 12 feet road and encroached upon Gut No.445/2 and seeks removal of encroached portion relying upon measurement map bearing No.M.R. No.6286 dated 03.11.2010. The defendants refuted plaintiffs' claim. The

evidence of plaintiffs was completed. The defendants had also recorded part of their evidence. However, Trial Court passed order of no further evidence.

4. According to petitioners, they applied for certified copy to obtain map, which is part of consent term, which was not produced by plaintiffs. After obtaining certified copies, application was filed seeking amendment in written statement to incorporate necessary averments based on map, which is part of consent decree. However, said application was rejected. Later on, petitioners filed application Exhibit-280 seeking production of documents namely compromise pursis and map annexed thereto. The said application was allowed. In this backdrop, plaintiffs filed application below Exhibit-284 for setting aside evidence closure order dated 11.06.2025 and permission to lead further evidence. However, Trial Court rejected said application. Hence, this Writ Petition.

5. Mr. Drupad Patil learned Advocate appearing for petitioners would submit that there is no dispute as to compromise decree passed in Special Civil Suit No.140/1995. The consent decree consists of map prepared on the basis of measurement map supplied by Survey Department. Now plaintiffs are contending that defendants have encroached upon plaintiffs' portion by changing alignment of 12 feet road. The controversy cannot be resolved unless reference is made to map appended to consent decree. Although said map is admitted in

evidence, minute details needs to be brought on record through examination of Survey Officer, who prepared said map. Mr. Patil would further invite attention of this court to cross-examination of Smt. Manisha Ganeshkar i.e. Surveyor, who has been examined as PW-3 before Trial Court, who carried measurement of Gut Nos.445/1 and 445/2 and submitted report of such measurement to Court stating that she had carried measurement without reference to map, which is part of consent decree in Special Civil Suit No.140/1995. He would, therefore, urge that since production of map is allowed, it is necessary to further cross-examine said witness as well as plaintiffs to bring clarity on record. He would urge that in such cases, Court can invoke jurisdiction under Order XVIII Rule 17 of Code of Civil Procedure. However, Trial Court declined to exercise such jurisdiction, although it was warranted in facts of present case.

6. Mr. Sasavade, learned Advocate appearing for respondents, however supports impugned order and points out that litigation between parties is going on since 1995. The present suit is filed in year 2012. The evidence of both parties is closed long back. The plaintiffs are trying to protract proceeding in suit by adopting tactics. The Trial Court rejected application by giving reasoned order, which need not be interfered under Article 227 of Constitution of India.

7. Having considered submissions advance by learned Advocates appearing for respective parties and on perusal of record tendered into

service before this Court, it can be observed that plaintiffs and defendants had jointly purchased suit properties and by way of compromise partitioned land as per map, which is part of compromise decree in Special Civil Suit No.140/1995. Now plaintiffs instituted suit alleging that defendants have changed alignment of 12 feet road and encroached upon 14 R portion of plaintiffs' property. Apparently, property divided under decree has been given independent gut numbers after division of Gut No.445. The plaintiffs relied upon measurement carried by PW-3 Smt. Manisha Ganeshkar in support of their contentions. Careful reading of her cross-examination shows that when she carried measurement she was not possessing map, which is part of compromise decree in Special Civil Suit No.140/1995. It is, therefore, clear that to appreciate correctness of measurement carried by PW-3, it is necessary that she shall be confronted with map, which is part of compromise decree. This would bring clarity as to claim of parties and help in final adjudication of dispute.

8. The Trial Court rejected application filed by plaintiffs for recall of witness firstly on ground that, parties were aware about compromise decree in Special Civil Suit No.140/1995 and documents annexed thereto. As such, while conducting cross-examination, defendants could have easily referred to map. Secondly, defendants sought many adjournments during proceeding of suit and adopted all sort of prolonging tactics.

9. An anguish expressed by Trial Court cannot be said to be unjustified. However, fact remains that in civil litigation, parties must be given full opportunity to put up their case and lead evidence, more so when such evidence is necessary to bring clarity in decision making process. In present case, entire case of parties rest upon compromise decree passed in earlier suit. The map which is produced after closure of evidence is integral part of decree. Although same has been admitted in evidence and parties can make reference thereto, to appreciate subsequent measurement carried by PW-3 in light of compromise decree, further cross-examination of PW-3 would be relevant. In this background, it is always permissible for Court to exercise jurisdiction under Section 151 of Code of Civil Procedure and permit recalling of witness for examination/cross-examination. In that view of matter, this Court finds that application below Exhibit-284 deserves to be allowed by setting aside impugned order 11.06.2025 by incorporating certain conditions. Hence, following order:

ORDER

- a. Writ Petition is allowed in terms of prayer Clauses (a) and (b) subject to condition that, petitioners deposit cost of Rs.15,000/- with Trial Court within period of four weeks from date of this order.
- b. On deposit of costs, it be disbursed to plaintiffs.
- c. The Trial Court shall issue witness summons only to PW-3 Smt. Manisha Ganeshkar and petitioners/defendants shall complete further

cross-examination on the date fixed by Court. After such examination parties to proceed to finally argue matter before Trial Court.

d. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE