IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12606 OF 2025

Puneet Satpal Malhotra and ors. ...Petitioners

Versus

Mukesh Satpal Malhotra and ors. ...Respondents

Dr. Tulzapurkar, Senior Advocate, i/b Shailendra Kanetkar and Shubham Suryawanshi, for the Petitioners.
Mr. Vineet Naik, Senior Advocate, a/w Rahul Kothari, i/b Bachubhai Munim & Co., for Respondent No.1.

CORAM: N. J. JAMADAR, J.
DATED: 30th SEPTEMBER, 2025

Order:-

1. Heard the learned Counsel for the parties.

2. The petitioners - plaintiffs call in question the legality, propriety, and correctness of an order dated 6th August, 2025, passed by the learned Civil Judge, Senior Division, on an application (Exhibit-481) filed by respondent No.1 - defendant No.1, thereby permitting defendant No.1 to produce the documents.

3. Satpal Malhotra was the father of petitioner No.1, respondent Nos.1 and 5. Satpal Malhotra passed away on 27th March, 2013 leaving behind Rajendra Mohini, his wife, and petitioner No.1 and respondent No.1, the sons, and respondent No.5, the daughter. Rajendra Mohini also passed away.

4. Respondent No.1 has propounded the purported Will dated 2nd March 2007 and Codicil dated 15th February, 2012 of late Satpal. Responent No.1 has also propounded the purported last Will dated 7th February, 2014 of Rajendra Mohini.

5. The petitioners have instituted Special Civil Suit No.1254 of 2014 for declaration that the alleged Will dated 2nd March, 2007 and Codicil dated 15th February, 2012 of late Satpal and Will dated 7th February, 2011 of late Rajendra Mohini are illegal and void, and for partition of the suit properties; which are stated to be the joint family properties.

6. The trial commenced. The evidence of the petitioners was recorded. The respondent No.1 has filed affidavit in lieu of examination in chief and is under cross-examination. In the meanwhile, respondent No.1 proposed to examine Dr. Vinod Shah (DW2), the purported attesting witness, on account of the exigency of the situation. Dr. Vinod Shah (DW2) was cross-examined on behalf of the petitioners on 17th July, 2025.

7. On 25th July 2025, the respondent No.1 filed an application seeking permission to produce five documents, namely, another purported original Will of Satpal dated 2nd March, 2007 and certified copies of four registered release deeds executed by the petitioner No.1 on 31st August, 2007.

8. The petitioners resisted the application by filing reply contending, *inter alia,* that the application was filed with an oblique motive to nullify the admissions given during the course of the cross-examination and at the fag end of the trial with intent to cause prejudice to the petitioners. The absence of reason for not filing the documents alongwith the written statement or at an earlier point in time, was highlighted.

9. By the impugned order, the learned Civil Judge was persuaded to allow the application observing that though there was procedural infraction on the part of the defendant No.1 in seeking the production of documents, yet, since the documents were relevant and necessary for a just decision of the case, leave to produce the documents was required to be granted.

10. Being aggrieved, the petitioners have invoked the writ jurisdiction.

11. Dr. Tulzapurkar, the learned Senior Advocate for the petitioners, submitted that the learned Civil Judge completely misdirected himself in permitting defendant No.1 to produce the documents at the fag end of the trial. There was no whisper about the documents which were sought to be produced in the written statement of defendant No.1 though the written statement was amended on a couple of occasions. Nor those documents were referred to during the course of the cross-examination of the plaintiff. Yet, the learned Civil Judge allowed the application on the ground that the documents were relevant for the purpose of the determination of the controversy. In the process, the learned Civil Judge lost sight of the mandate contained in Order VIII Rule 1A of the Code and the import thereof expounded by the Supreme Court in a series of decisions. Dr. Tulzapurkar laid emphasis on the fact that no explanation was offered by defendant No.1 for non-production of the said documents at an earlier point in time. In such circumstances, the exercise of discretion by the learned Civil Judge is perverse being in teeth of the mandatory provisions.

12. To lend support to these submissions, Dr. Tulzapurkar, placed a very strong reliance on the judgment of the Supreme Court in the case of ***Sugndhi (dead) by Legal Representatives and another vs. P. Rajkumar represented by his Power Agent***

Imam Oli [1] the ratio of which, according to Dr. Tulzapurkar, was completely misconstrued by the learned Civil Judge.

13. In opposition to this, Mr. Naik, the learned Senior Advocate for respondent No.1, would submit that the impugned order does not warrant any interference in exercise of the writ jurisdiction. The learned Civil Judge was fully alive to the procedural mandate in the matter of production of the documents. The learned Civil Judge noted that the application seeking production of documents did not satisfactorily spell out the reasons as envisaged by Rule 1A of Order VIII, yet, exercising the power under Order VIII, Rule 1A(3), the learned Civil judge permitted the production of the documents as the documents were found relevant and necessary for a just decision of the case. Such an order is not amenable to interference in writ jurisdiction. Mr. Naik would urge the learned Civil Judge correctly placed reliance on the observations of the Supreme Court in the case of ***Sugandhi*** (supra) to lend support to his finding.

14. On the necessity of the documents, Mr. Naik would urge, the production of the original Will dated 2nd March, 2007 was necessitated on account of the evidence of Dr. Vinod Shah

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1 (2020) 10 Supreme Court Cases 706.

(DW2). The defendant No.1 was compelled to produce the certified copies of the release deeds executed by petitioner No.1 on 31st August, 2007 as petitioners suppressed those documents. In fact, it was the duty of the plaintiffs to produce those release deeds before the Court under the provisions of Order VII Rule 14 of the Code. Instead, the plaintiffs approached the court with a bald assertion that there was no partition. In these circumstances, the learned Civil Judge was fully justified in permitting the production of the documents,

15. To begin with, it is necessary to keep in view the nature of the essential dispute between the parties. The suit is for a declaration that the suit properties described in Annexures-I and II continued to be joint family properties of deceased Satpal and Rajendra Mohini and plaintiff No.1 and his branch has 1/3 undivided share in the suit properties and the alleged Will and Codicil of late Satpal and the alleged Will of late Rejendra Mohini are illegal, null and void and do not bind the interest of the plaintiffs. The issue as to whether the estate of late Satpal and Rajendra Mohini would devolve by testamentary or intestate succession is at the heart of the controversy.

16. The Will dated 2nd March, 2007 of late Satpal propounded by respondent No.1 was sought to be proved by examining Dr.

Vinod Shah (DW2), the alleged attesting witness. In his examination-in-chief, Dr. Vinod Shah (DW2) affirmed that there were three original Wills made by late Satpal, simultaneously. It is the case of respondent No.1 that this necessitated the production of the second original Will dated 2nd March, 2007.

17. At the outset, it is necessary to note that there was no controversy over the fact that the contents of the second purported original Will are exactly identical to those of the purported Will (Exhibit-447), initially propounded by respondent No.1. It is also imperative to note that Dr. Vinod Shah (DW2) was extensively cross-examined on the aspects of execution and attestation of the purported Will. The existence of two other sets of the original Will, dated 2nd March, 2007, deposed to by Dr. Vinod Shah (DW2), brings in its trail the question as to whether the Will (Exhibit-447) is the last Will and testament of late Satpal. It was, thus, for the propounder to explain the said situation. From this standpoint, the learned Civil Judge was justified in observing that the said original Will (second set) was a relevant document.

18. With regard to the certified copies of the registered release deeds, purportedly executed by plaintiff No.1, thereby relinquishing his share in the respective properties to which those release deeds pertained, the relevancy of those instruments can hardly put in contest. If it could be demonstrated that plaintiff No.1 had released his share in any of the properties, which form part of the suit properties, as described in Annexures-I and II, that would bear upon the claim of the plaintiffs for partition and separate possession qua those properties. Therefore, the learned Civil Judge was fully justified in observing that the release deeds were also relevant and necessary for determining the question in controversy between the parties.

19. The thrust of the submission of Dr. Tulzapurkar was that the learned Civil Judge misdirected himself in giving undue weightage to the relevancy of the documents and in ignoring the mandate of Order VIII Rule 1A of the Code. As a submission was canvassed by Dr. Tulzapurkar that the learned Civil Judge misconstrued the ratio in the case of ***Sugandhi*** (supra), it may be appropriate to extract the relevant observations of the Supreme Court in the said judgment. Paragraphs 7 to 10 of the said judgment are material and, hence, extracted below.

> "**7**. Sub-rule (1) mandates the defendant to produce the documents in his possession before the court and file the same along with his written statement. He must list out the documents which are in his possession or power as well as those which are not. In case the defendant does not file any document or copy thereof along with his written statement,

> such a document shall not be allowed to be received in evidence on behalf of the defendant at the hearing of the suit. However, this will not apply to a document produced for cross examination of the plaintiff's witnesses or handed over to a witness merely to refresh his memory. Sub-rule (3) states that a document which is not produced at the time of filing of the written statement, shall not be received in evidence except with the leave of the court. Rule (1) of Order 13 of C.P.C. again makes it mandatory for the parties to produce their original documents before settlement of issues.
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> **8**. Sub-rule (3), as quoted above, provides a second opportunity to the defendant to produce the documents which ought to have been produced in the court along with the written statement, with the leave of the court. The discretion conferred upon the court to grant such leave is to be exercised judiciously. While there is no straight jacket formula, this leave can be granted by the court on a good cause being shown by the defendant.
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> **9**. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the court should take a lenient view when an application is made for production of the documents under sub-rule (3).
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> **10**. Coming to the present case, the defendants have filed an application assigning cogent reasons for not producing the documents along with the written statement. They have stated that these documents were missing and were only traced at a later stage. It cannot be disputed that these documents are necessary for arriving at a just decision in the suit. We are of the view that the courts below ought to have granted leave to produce these documents."
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> (emphasis supplied)

20. The learned Civil Judge extracted the observations in paragraph 9 above. Dr. Tulzapurkar would urge the learned Civil Judge missed to note the caution administered by the Supreme Court in the preceding paragraphs.

21. Evidently, it is incumbent upon the defendant to produce all the documents upon which he relies, alongwith the written statement. Sub-rule (3) of Rule 1A of Order VIII confers discretion on the Court to permit a defendant to produce documents which were not produced alongwith the written statement. However, such discretion is required to be exercised judiciously. The defendant, who seeks the leave of the Court to produce the documents by invoking sub-rule (3) of Rule 1A of Order VIII is required to make out a case which would justify the grant of such leave. In the case at hand, the criticism on behalf of the petitioners that no justifiable cause was ascribed seeking leave of the Court at the stage of the leading of the defence evidence may appear alluring. However, the substance of the matter cannot be lost sight of.

22. If plaintiff No.1 has allegedly executed the release deeds and if it could be so proved in evidence, then the fact that the plaintiffs suppressed those documents while seeking relief of partition, assumes material significance. Since the suit is for partition and separate possession of the plaintiffs share in the suit properties, the execution of release deeds by plaintiff No.1 has a material bearing on the fate of the suit.

23. As noted above, the production of the second set of purported original Will dated 2nd March, 2007 of late Satpal was necessitated on account of the deposition of Dr. Vinod Shah (DW2) the alleged attesting witness. Where the Court is called upon to determine whether the estate would devolve on the basis of a testamentary instrument, the determination as to whether the testamentary instrument propounded by a party is the last Will and testament of the executant, is of pivotal significance. As noted above, the claim of Dr. Vinod Shah (DW2) that late Satpal had executed three original Wills, in his presence, brings to the fore the question of existence of the other original Wills and their contents.

24. If viewed in the aforesaid context, the aspect of delay in seeking production of the aforesaid documents and the failure to follow the mandate contained in Rule 1A(1) of Order VIII pales in significance.

25. The matter can be looked at from a slightly different perspective. Under the provisions of Order XVIII Rule 17A of the Code, which came to be omitted by the CPC (Amendment Act) 1999, the Court was empowered to permit a party to produce evidence not previously known or which could not be produced despite due diligence. The omission of the said Rule, however, does not imply that the Court is completely denudated of its powers to permit a party to adduce evidence or produce documents at a later stage. In the case of ***K. K. Velusamy vs. N. Palanisamy***[2]***,*** the Supreme Court had an occasion to consider the consequences of the deletion of Rule 17-A of Order XVIII and also delineate the approach to be adopted by the Courts. The observations of the Supreme Court in paragraphs 13, 14, 19 and 20 of the said judgment are instructive and, hence, extracted below:

> "**13**. The Code earlier had a specific provision in Order 18 Rule 17A for production of evidence not previously known or the evidence which could not be produced despite due diligence. It enabled the court to permit a party to produce any evidence even at a late stage, after the conclusion of his evidence if he satisfied the court that even after the exercise of due diligence, the evidence was not within his knowledge and could not be produced by him when he was leading the evidence. That provision was deleted with effect from 1.7.2002. The deletion of the said provision does not mean that no evidence can be received at all, after a party closes his evidence. It only means that the amended structure of the Code found no need for such a provision, as the amended Code contemplated little or no time gap between completion of evidence and commencement and conclusion of arguments. Another reason for its deletion was the misuse thereof by the parties to prolong the proceedings under the pretext of discovery of new evidence.
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> **14**. The amended provisions of the Code contemplate and expect a trial court to hear the arguments immediately after the completion of evidence and then proceed to judgment. Therefore, it was unnecessary to have an express provision for re-opening the evidence to examine a fresh witness or for recalling any witness for further examination. But if there is a time gap between the completion of evidence and hearing of the arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence which he could not lay his hands earlier, or some evidence in regard to

2 (2011) 11 Supreme Court Cases 275.

the conduct or action of the other party comes into existence, the court may in exercise of its inherent power under Section 151 of the Code, permit the production of such evidence if it is relevant and necessary in the interest of justice, subject to such terms as the court may deem fit to impose.

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19. We may add a word of caution. The power under Section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs. If the application is allowed and the evidence is permitted and ultimately the court finds that evidence was not genuine or relevant and did not warrant the reopening of the case recalling the witnesses, it can be made a ground for awarding exemplary costs apart from ordering prosecution if it involves fabrication of evidence. If the party had an opportunity to produce such evidence earlier but did not do so or if the evidence already led is clear and unambiguous, or if it comes to the conclusion that the object of the application is merely to protract the proceedings, the court should reject the application. If the evidence sought to be produced is an electronic record, the court may also listen to the recording before granting or rejecting the application.

20. If the application is allowed and the evidence is permitted and ultimately the court finds that evidence was not genuine or relevant and did not warrant the reopening of the case recalling the witnesses, it can be made a ground for awarding exemplary costs apart from ordering prosecution if its involves fabrication of evidence. If the party had an opportunity to produce such evidence earlier but did not do so or if the evidence already led is clear and unambiguous, or if it comes to the conclusion that the object of the application is merely to protract the proceedings, the court should reject the application. If the evidence sought to be produced is an electronic record, the court may also listen to the recording before granting or rejecting the application."

26. In the case of ***Salem Advocate Bar Association Vs Union of India***[3] a three-Judge Bench of the Supreme Court considered the effect of deletion of Rule 17-A. It was observed as under:

> "***Additional Evidence***
> **13**. In *Salem Advocates Bar Assn. case*, it has been clarified that on deletion of Order XVIII Rule 17-A which provided for leading of additional evidence, the law existing before the introduction of the amendment, i.e., 1st July, 2002, would stand restored. The Rule was deleted by Amendment Act of 2002. Even before insertion of Order XVIII Rule 17-A, the Court had inbuilt power to permit parties to produce evidence not known to them earlier or which could not be produced in spite of due diligence. Order XVIII Rule 17-A did not create any new right but only clarified the position. Therefore, deletion of Order 18 Rule 17-A does not disentitle production of evidence at a later stage. On a party satisfying the Court that after exercise of due diligence that evidence was not within his knowledge or could not be produced at the time the party was leading evidence, the Court may permit leading of such evidence at a later stage on such terms as may appear to be just."

27. The aforesaid enunciation of law indicates that despite deletion of Rule 17-A of Order XVIII, the Civil Court's inherent powers to call any witness or permit a party to adduce evidence, at any stage, is not taken away.

28. Reverting to the facts of the case, as the learned Civil Judge has exercised a positive discretion to permit respondent No.1 to produce the documents, the relevancy of which can hardly put in contest, this Court in exercise of corrective

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3 (2005) 6 SCC 344.

jurisdiction does not consider it justifiable to interfere with such exercise of discretion. It is, however, necessary to clarify that apart from the cross-examination of respondent No.1 on the aforesaid documents, the plaintiffs shall have the liberty to adduce further evidence in connection with the documents, the production of which has been allowed by the learned Civil Judge by the impugned order. Subject to aforesaid clarification, the petition deserves to be dismissed.

29. The petition stands dismissed.

30. The petitioners – plaintiffs shall, however, have the liberty to adduce evidence in regard to the documents, of which the production has been allowed by the impugned order.

No costs.

[N. J. JAMADAR, J.]