



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 4093 OF 2025

Harish Purshottam Trivedi (Dead on 19.04.2017)
Represented through legal heir-Hemant Harish Trivedi,
Aged about 56 years, Occ: Business, R/o "Shri Purshottam",
Central Avenue Road, Near Gandhibagh Garden, Nagpur.

PETITIONER

VERSUS

1. Dhananjay Suresh Trivedi, Aged major, Occ-Business.
2. Suresh Purshottam Trivedi, Aged Major, Occ-Business.

Both 1 & 2 R/o Plot No.18, 'Shri Purshottam', Central
Avenue Road, Gandhibagh, Nagpur.

RESPONDENTS

Shri Gopal B. Sawal, Counsel for the petitioner.
Shri Romil A. Jain, Counsel for the respondents.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : OCTOBER 10, 2025

ORAL JUDGMENT

RULE. Rule is made returnable forthwith and heard finally with consent of the counsel for the parties.

2. The petitioner, who is the original plaintiff in the suit, has filed the instant writ petition challenging the order dated 29.03.2025 passed by the trial Court rejecting the application filed by the petitioner for permission to lead further evidence by examining witnesses from City Survey Office, Office of the Nagpur Improvement Trust and witnesses to the Will-deed dated 05.04.2017.

3. Shri Gopal Sawal, learned counsel for the petitioner submitted that by virtue of Will-deed dated 05.04.2017, the petitioner has got ownership rights with respect to the suit property and the documents need to be proved by leading evidence and by examining the witnesses to the said

Will-deed. He also submits that to prove the case put forth by the plaintiff before the trial Court, record from the Offices of City Survey and Nagpur Improvement Trust is required to be brought on record and for that purpose, the officials of these Offices need to be examined as witnesses. He, therefore, submits that the plaintiff has filed an application on 24.01.2025 seeking permission to examine these witnesses which came to be rejected by the impugned order and the plaintiff is deprived from an opportunity to prove his case.

4. Opposing the writ petition, Shri Romil Jain, learned counsel for the respondents submitted that the application deserved to be rejected as the plaintiff failed to demonstrate sufficient cause and necessity to examine the said witnesses. He invited attention to the conduct of the plaintiff in the entire proceedings and submitted that the plaintiff had sufficient opportunity to lead his evidence and the application at Exhibit 85 is an attempt to prolong the matter. He submitted that the order sheet of the proceedings of Regular Civil Suit No.489 of 2004 reveals that the evidence of the plaintiff was closed firstly on 15.11.2021 and after request of the plaintiff, he was afforded an opportunity to lead his evidence. Thereafter, he sought repeated adjournments and on 16.08.2022, the evidence of the plaintiff was again closed. Thereafter again, he made request for an opportunity to lead evidence and although the permission was granted, he failed to lead evidence and his evidence was then closed on 18.09.2023. Thereafter again, the plaintiff was granted permission as a last chance to lead evidence subject to payment of costs, however the plaintiff failed to

lead evidence and his evidence was closed by an order dated 08.01.2025. Under these circumstances, the plaintiff filed the application at Exhibit 85 on 24.01.2025 for setting aside the order dated 08.01.2025 passed below Exhibit 1 and permission to examine the witnesses mentioned above. He also submitted that the application at Exhibit 85 does not mention any sufficient cause as required under Order XVI Rule 1(3) of the Code of Civil Procedure, 1908 for permitting the plaintiff to examine the witnesses other than those mentioned in the list of witnesses filed earlier.

5. Thus, rival contentions fall for my consideration.

6. The controversy involved in the matter is about permitting the plaintiff to examine the witnesses, particularly the officials of City Survey, Nagpur Improvement Trust and witnesses to the Will-deed. A perusal of the plaint shows that there are no pleadings with respect to the documents received from the Offices of City Survey or Nagpur Improvement Trust and the application at Exhibit 85 does not at all mention any reasons showing need to examine the said officials. As regards the document of Will-deed dated 05.04.2017, the petitioner has failed to demonstrate any relevance of the said document with the controversy involved in the suit. The suit is for declaration and permanent injunction with respect to the Will-deed dated 02.07.1993 and there is no dispute with respect to the Will-deed dated 05.04.2017 alleged to have been executed in favour of the plaintiff. Pertinently, the evidence of the plaintiff was already closed and sufficient opportunity was granted to the plaintiff to examine witnesses from his

side. It is not in dispute that the witnesses proposed to be examined were not mentioned in the list of witnesses submitted by the plaintiff in the suit. As such, considering the provisions of **Order XVI Rule 1(3) of the Code of Civil Procedure, 1908**, it was incumbent on the plaintiff to make out a case by showing sufficient cause for omission to mention the names of said witnesses in the earlier list of witnesses. A perusal of the application at Exhibit 85 shows that no reasons are mentioned therein and the plaintiff has failed to make out a case for invoking provisions of the said rule.

7. Pertinent to note, the civil suit was filed by the plaintiff in the year 2004 and the record reveals that sufficient opportunity was granted to the plaintiff to lead his evidence. On a perusal of the pleadings of the parties, it is clear that the examination of the officials of City Survey Department or the Nagpur Improvement Trust is not necessary for complete and effective adjudication of the controversy involved in the suit. Further, in absence of any pleadings with respect to the Will-deed dated 05.04.2017 and in absence of any controversy with respect to the said document, there is no need for examination of any witnesses of the said Will-deed. As such, I am of the firm view that the plaintiff has failed to establish any case for permission to examine these witnesses. A perusal of the impugned order shows that the trial Court has given due consideration to all the relevant aspects, including that of conduct of the plaintiff and no perversity is found with the impugned order.

8. Having regard to the overall factual and legal aspects mentioned above, there is no need of indulgence under Article 227 of the Constitution of India. The writ petition deserves to be dismissed and accordingly the same stands dismissed with no order as to costs.

(PRAFULLA S. KHUBALKAR, J.)

APTE