



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10804 OF 2025

Baswaraj Ramling Swami,
age 62 years, Occ. Agriculture,
R/o at Post Neknal, Tq. Deoni,
District Latur.

Petitioner.

Versus

1. Shantveer Ramling Swami,
age 88 yrs, Occ. Agriculture.
2. Vaijinath s/o Ramling Swami,
age 66 yrs, Occ. Agri.
3. Somnath s/o Ramling Swami,
age 56 yrs, Occ. Agri.
4. Ramling s/o Rachotti Swami,
age 85 yrs, Occ. Agri.

All R/o at Post Neknal,
Tq. Deoni, District Latur.

Respondents.
(orig defendants)

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Advocate for Petitioner : Mr. Ajinkya Reddy
Respondent nos.1 to 4 Served – absent.

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : 2nd February, 2026

ORDER :-

1. The petitioner takes exception to the order dated 3.4.2025 passed by the learned Civil Judge, J.D. Deoni, District Latur, below Exhibit-43 in Regular Civil Suit No.78 of 2021,

whereby petitioner's application to recall and re-examine the witness is rejected.

2. The petitioner is original plaintiff in Regular Civil Suit No.78 of 2021 which is pending before the Civil Judge Junior Division, Deoni. The suit is instituted for relief of declaration of ownership on the basis of will notarized on 27.12.2020 and purported to be executed by petitioner's mother namely Revammabai Swami.

3. The respondents/defendants contested the suit by filing written statement. Plaintiff in his endeavor to prove the will examined Mr. Unmesh Manohar Hibare (Advocate Notary) as witness no.2. The witness was cross-examined on behalf of defendants. Immediately, thereafter, petitioner realized that Notary Register, which was brought by witness and referred in Examination-in-chief is not exhibited or relevant extract is not made part of the evidence. Therefore, he sought permission to re-examine PW-2 to bring on record extract of notary register. Trial Court rejected said application observing that permitting re-examination of PW 2 would amount to filling up lacuna in the evidence. The application does not pass the rigors of section 138 of the Evidence Act.

4. Mr. Ajinkya Reddy, learned advocate appearing for petitioner would submit that petitioner/plaintiff has based claim on will, which has been admitted in evidence and given Exhibit-34. On 27.12.2020 will was notarized in the register of Advocate Notary. Advocate-Notary PW-2 was present in the Court alongwith Notary Register. He identified document registered at serial no.215 of 2020 in Notary Register. However, extract of aforesaid entry was not placed on record or given exhibit number which is essential to prove execution of notarized will.

5. Mr. Reddy, would point out that application seeking permission to re-examine the witness was immediately made after cross-examination was over, which could have been allowed. In support of his contentions, he relies upon observations of the Hon'ble Supreme Court in case of **Rammi alias Rameshwar Vs. State of M.P.** reported in **AIR 1999 Supreme Court 3544** and of this Court in case of **Anand Rangrao Ingle and another Vs. Govind Rangrao Ingle and others** reported in **2012 (5) Mh.L.J. 955**.

6. Although, notice for final disposal of this writ petition was duly served upon respondents, none appeared.

7. Apparently, plaintiff's claim is based on the so-called Will executed by his mother. It is admitted in evidence and marked as Exhibit-34. The document has been notarized before PW-2 Advocate Notary. Petitioner examined him before Court as PW-2. The perusal of Examination-in-Chief of PW-2 suggests that witness was present before the Court alongwith original notary register having entry of will at serial no.215 of 2020. In this background, a mere formality of placing on record either original register or extract thereof was remained. Looking to the nature of dispute between parties, extract of register maintained by Notary would be relevant and essential. However, there appears inadvertent mistake on the part of advocate appearing for petitioner. Immediately, on realizing mistake, an application was tendered seeking permission for re-examination to extent of bringing register entry or extract of the register.

8. Learned Trial Judge was of the view that granting permission to re-examine would be a license to fill up the lacuna. It is difficult to countenance with the view taken by the Trial Court. When parties are litigating over civil rights, they should be given a full opportunity to establish their case.

The procedure is handmade of justice and cannot be an impediment in the path of justice. Unless it is shown that serious prejudice would be caused to other side or some right accrued in favour of the other side is likely to be prejudiced, reasonable request made by the party during course of the evidence can be considered. The language of section 138 of the Act cannot be read as fetter for re-examination of the witness, if some technical error has occurred during course of chief-examination and correction thereof is sought. Even, by reading chief-examination of PW-2, it can be observed that there are sufficient avernments, by which production of extract of notary register can be allowed and document can be given exhibit. Therefore, for the limited purpose of presentation of extract of notary register, Court could have allowed re-examination or further examination of PW-2. This Court in case of Anand Ingle (supra) in paragraph nos.8 and 9 observed thus :-

- “7. In the light of the judgment of the Supreme Court in the case of K.K. Velusamy (supra) this Court feels it necessary that the petitioner should get one more opportunity to put forth his case before the trial court and it is left open to the trial court to decide the said application in the light of the Judgment of the Supreme Court, cited supra. Therefore, the impugned order is set aside. Application below Exh.41 is restored to its original file. The petitioners

and the respondents will appear before the trial court and advance their arguments on merits. It is also left open for the concerned Court to decide the application afresh on merits, however, taking into consideration the exposition of the Supreme Court in the case of K.K. Velusamy (supra).

8. Rule is made absolute accordingly. The petition is disposed of in the terms, indicated above.
9. The trial court is directed to hear the said application afresh within a month from today and render its decision thereon. It is made clear that the trial court shall not be influenced by any of the observations made in this order.”

9. Even inherent powers of the civil court can be invoked in appropriate cases to avoid injustice on account of technicalities. In result, the impugned order is quashed being unsustainable in law. Writ petition is **allowed** in terms of prayer clause “A & “B” and **disposed of**.

(S. G. CHAPALGAONKAR)
Judge.

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