



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1035 OF 2026

1. Mohd. Abdul Aleem Siddiqui s/o
Mohd. Abdul Hafeez Siddiqui,
Age – 72, Occupation – Pensioner,
2. Mohd. Abdul Kaleem Siddiqui s/o
Mohd. Abdul Hafeez Siddiqui,
Age – 67, Occupation – Pensioner,
3. Mohd. Abdul Saleem Siddiqui s/o
Mohd. Abdul Hafeez Siddiqui,
Age – 57, Occupation – Business,
4. Mohd. Abdul Azeem Siddiqui s/o
Mohd. Abdul Hafeez Siddiqui,
Age – 52, Occupation – Pensioner,
5. Farhat Sultana w/o Md. Maslehoddin,
Age – 77 years, Occupation – Pensioner

All resident of Madina Nagar, Nanded,
District Nanded.

... PETITIONERS
(Orig. Appellants)

VERSUS

1. Mohd. Abdul Naeem Siddiqui s/o
Mohd. Abdul Hafeez Siddiqui,
Age – 63, Occupation – Business,
Resident of Degloornaka, Nanded, District Nanded.
2. Ishrat Sultana w/o Mukhtar Ahmed
Age – 70 years, Occupation – Household,
Resident of Hyderbag No.2, Nanded, District Nanded.

3. Talat Sultana w/o Shaikh Mehboob,
Age : 67 years, Occupation – Household
(since deceased through Legal Representatives)
- 3/1. Shaikh Mehboob s/o Shaikh Madarsab,
Age – 77 years, Occupation – Nil,
Resident of Madina Nagar, Nanded, District Nanded
- 3/2. Rizwana w/o Shaikh Habib,
Age – 47 years, Occupation – Household,
Resident of Hyderbag No.2, Nanded, District Nanded.
- 3/3. Farzana w/o Shaikh Ahmed,
Age – 42 years, Occupation – Household,
Resident of – near Iqra School, Hyderbeg,
No.2, Nanded, District Nanded.
- 3/4. Shaikh Imran s/o Mehboob Sab,
Age – 40 years, Occupation – Business,
Resident of Madina Nagar, Nanded, District Nanded
- 3/5. Irfana w/o Md. Zafar,
Age – 38 years, Occupation – Household,
Resident of Madina Nagar, Nanded, District Nanded
- 3/6. Meraj w/o Abdul Mateen,
Age – 37 years, Occupation – Household,
Resident of Khadakpura, Waghi Road, Nanded, District Nanded
- 3/7. Farhan s/o Shaikh Mehboob
Age – 34 years, Occupation – Business,
Resident of Madina Nagar, Nanded, District Nanded
- 3/8. Kausar D/o Shaikh Mehboob Sab,
Age – 34 years, Occupation – Education,
Resident of Madina Nagar, Nanded, District Nanded
4. Nuzhat Sultana w/o Mohd. Ishaq,
Age – 65 years, Occupation – Household,
Resident of Mangalwarpeth, Ambajogai, District Beed.

5. Nikhat Sultana w/o Md. Khaleeq Siddiqui,
Age – 57 years, Occupation – Service,
Resident of Padegaon, Aurangabad
(Chhatrapati Sambhaji Nagar).

... RESPONDENTS
(Orig. Respondents)

Mr. M. V. Ghatge, Advocate for Petitioners
Mr. A. D. Hande, Advocate for Respondent No.1

CORAM : S. G. CHAPALGAONKAR, J.
DATED : 25th FEBRUARY, 2026

FINAL ORDER :-

1. The petitioners impugn order dated 12.01.2026 passed by Extra Jt. District Judge-1, Nanded in R.C.A. No. 52 of 2019, below Exhibits 45 and 47, thereby rejecting permission to produce additional documents at appellate stage.

2. The petitioners are defendants in Spl.C.S. No. 33 of 2012 instituted by respondent No.1 seeking relief of partition and separate possession. The petitioners caused appearance in suit. They filed written statement contending that plaintiff has relinquished all his rights in suit property. In pursuance to their defence, they recorded evidence before Trial Court. However, upon appreciation of evidence, Trial Court decreed suit of plaintiff declaring that plaintiff and defendants are having share in suit property bearing plot Nos.17 and 18 in Survey No.161/1. The aggrieved by

judgment and decree dated 28.02.2019, petitioners filed R.C.A. No. 52 of 2019 before District Court at Nanded. On 23.04.2025 Appeal was posted for arguments, Petitioners filed an applications below Exhibits 45 and 47 seeking permission to produce additional document. The Appellate Court rejected applications vide impugned order dated 12.01.2026. Hence this Writ Petition.

3. Mr. Mahesh Ghatge, learned Advocate appearing for petitioners, submits that petitioners have took plea in written statement that plaintiff has already relinquished his share in suit property against agricultural land and plaintiff has admitted that he is in possession of land Gut No.788. The document of relinquishment was not available at the time of filing defence in suit. He submits that petitioners' mother expired on 09.09.2010. Thereafter, while colouring house, they found document of relinquishment in old cupboard. Accordingly, same was produced before Appellate Court. However, learned District Judge refused to entertain application on an erroneous ground.

4. Per contra, Mr. A. D. Hande, learned Advocate appearing for respondents supports impugned order.

5. The Order 41 Rule 27 of Code of Civil Procedure deals with production of additional evidence at appellate stage. It is trite that unless

conditions enumerated under Order 41 Rule 27 are fulfilled, permission to lead additional evidence cannot be granted. The permission to lead additional evidence can be granted only when Trial Court refused to admit evidence or party could not produce evidence at trial stage in spite of due diligence or when Appellate Court requires any document or witness for pronouncement of judgment or other substantial cause. The parties cannot be allowed to fill up lacuna at appellate stage.

6. In present case, it can be observed that although petitioners took plea in written statement that plaintiff has relinquished her rights in property, there is no pleading as to existence/ or execution of any such document. The defendants recorded evidence during course of trial, however, they never contended that document of relinquishment is in existence. The appeal is pending since 2019. At this stage, application has been filed seeking permission to produce document by way of additional evidence. A perusal of applications Exhibit 45 and 47 depicts that those are two lines application, whereby petitioners convey that they intend to produce document. No reason is incorporated as to why such document was not produced at the trial or any other reason has contemplated under Order 41 Rule 27 of Code of Civil Procedure. It appears that later on petitioners filed affidavits to supplement reasons, realizing that application sans reason. Even in affidavit only reason

sought to be employed that recently document is traced in cupboard. Pertinently they state that their mother expired in year 2010, thereafter while rearranging household articles, document is discovered but fact remains that petitioners' mother died in year 2010 and document seen the light of day in year 2025. Thus Appellate Court rightly refused to grant the permission. Hence, there is no substance in Writ Petition and same stands **rejected**.

(S. G. CHAPALGAONKAR, J.)

ssp