IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2224 OF 2016
WITH
INTERIM APPLICATION NO. 686 OF 2023

UDAY SHIVAJI JAGTAP
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Date: 2026.10.09 16:37:07 +0530

Sitabai Dhondu Khanwilkar and Anr. … Petitioners

Vs.

Babaji Bhikaji Khanvilkar (Since Decd) Through Lrs. and Ors. … Respondents

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Mr. Manoj Sabale a/w Somvrat Kurlekar, Sandip Kurane for the Petitioner
Mr. Rahul S. Rane (through VC) a/w Shubham R. Vasekar for the Respondents

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CORAM : SHAILESH P. BRAHME, J.

DATE : 8th OCTOBER, 2026.

P. C. :

. Heard the contesting parties.

2. Though couple of parties are passed away, the matter can be taken up for final disposal as the contesting parties are before the Court. It would be open for the parties to take steps against the deceased parties before the trial Court, if not done earlier.

3. Being aggrieved by the order dated 27.07.2015 passed below Exh.141 in R.C.S. No. 71 of 2008, the defendants preferred the writ petition. The respondent no.1 has filed R.C.S No.71 of 2008 for partition, possession and injunction. The suit is contested by the

petitioners. The first witness of the respondent – plaintiff was examined. In the midst of the cross-examination, application Exh.141 is preferred on 24.11.2014 seeking production of evidence and permission to file additional affidavit in lieu of examination-in-chief. It is objected by the petitioners. By impugned order the application is allowed.

4. It is submitted that the documents, which are sought to be produced were with the respondent - plaintiff and no reason is forthcoming as to why those were withheld. It is impermissible to file the documents and seek leave to produce additional affidavit when the Suit is of 2008. It is submitted that respondent – plaintiff is attempting to fill up lacuna and hence, application is liable to be rejected.

5. Learned counsel for the respondents supports the impugned order. There is foundation in the plaint for the documents which are sought to be produced. It is submitted that no prejudice will be caused to the petitioner.

6. The Suit filed by the respondents is at the stage of recording of evidence of the plaintiff and his first witness is being cross-examined. The documents which are sought to be produced can be said to be with the respondent – plaintiff. I have carefully gone through paragraph nos. 5 and 8 of the plaint, which would constitute sufficient foundation and

pleadings for the newly introduced documents. I do not find that there is any apparent illegality in permitting Application Exh.141.

7. The learned trial Court has relied upon the judgments of the Bombay High Court in the impugned judgment for allowing the application. A pragmatic view has been taken. The documents are necessary to decide the real controversy between the parties. The petitioners will get opportunity of cross-examine the witnesses and / or to challenge the oral evidence. No prejudice can be said to have been caused.

8. The Writ Petition is dismissed. It is clarified that petitioners shall be at liberty to challenge the documents or oral evidence at the appropriate stage, as is permissible in law.

9. Both the parties shall co-operate in expeditious disposal of the suit. The trial Court shall decide the suit within a period of eight months.

10. In view of dismissal of the petition, pending application does not survive and the same is disposed of.

(SHAILESH P. BRAHME, J.)