

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

WRIT PETITION NO. 1102 OF 2026

Digambar Dharmaji Choukekar (since Deceased)
Thr. Legal heirs 1a. Suhasini Digamber Choukekar and Ors.

VERSUS

Subhash Ragho Choukekar And Ors.

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Mr. Rahul R. Patil, Advocate for Petitioners.

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CORAM : SACHIN S. DESHMUKH, J.

DATE : 21st APRIL, 2026.

P. C. :

1. The Petitioners have raised an exception to the orders dated 07.01.2026 rejecting the application below Exhibit-35 presented by the Petitioners for production of evidence under Order XLI Rule 27 of the Code of Civil Procedure (Hereinafter "CPC") and the application below Exhibit-18 seeking stay to the execution of the decree.

2. The Petitioners are the original defendant Nos.1 and 2 while the Respondent No.1 is original Plaintiff and Respondent No.2 to 14 are the other original defendants. Hereinafter the parties shall be referred to by their original status in the suit.

3. The plaintiff had instituted Regular Civil Suit No.1 of 2012 against the defendants seeking cancellation of registered sale deed, partition, separate possession and permanent injunction before the Civil Judge Junior Division, Malvan, which came to be allowed by the Judgment and decree dated 11.03.2019.

4. Aggrieved by the same, the defendants preferred an appeal before the Regular Civil Appeal No.31 of 2022 before the learned Adhoc District Judge-1, Sindhudurg-Oros. During pendency of the appeal, the Defendants filed an application below Exhibit-35 for production of evidence and the application below Exhibit-18 seeking stay to the execution of the decree. However, the same came to be rejected. As such, the Defendants are before this Court.

5. In the backdrop of the aforesaid facts, learned counsel for the Petitioners submits that the orders under challenge are unsustainable in law. It is contended that the plaintiff was about to sale certain part of the suit property and during the pendency of the appeal, certain documents were discovered from the revenue authorities in relation to the same. As such, the same being additional evidence, ought to have been admitted by the appellate Court. In order to prevent further loss to the defendants, the

execution of the decree ought to have been stayed. All these aspects are not duly appreciated by the Court below. Hence, prayed to quash and set aside the orders under challenge.

6. Having heard the submissions of learned counsel for the Petitioners and upon perusal of the material on record indicates that the primary issue raised by the plaintiff is in relation to adducing additional evidence under Order XLI Rule 27 of the CPC at the appellate stage.

7. At this juncture, it would apt to reproduce the observations rendered by the Hon'ble Apex Court in **case of North Eastern Railway Administration, Gorakhpur Versus Bhagwan Das (D) By Lrs¹** which reads under :

“12. Though the general rule is that ordinarily the appellate court should not travel outside the record of the lower court and additional evidence, whether oral or documentary is not admitted but Section 107 C.P.C., which carves out an exception to the general rule, enables an appellate court to take additional evidence or to require such evidence to be taken subject to such conditions and limitations as may be prescribed. These conditions are prescribed under Order 41 Rule 27 C.P.C. Nevertheless, the additional evidence can be admitted only when the circumstances as stipulated in the said rule are found to exist. The circumstances under which additional evidence can be adduced

(i) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, (clause (a) of sub rule (1)) or

¹ 2008 (8) SCC 511

(ii) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within the knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, (clause aa, inserted by Act 104 of 1976) or

(emphasis supplied)

(iii) the appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause. (clause (b) of sub rule (1)).”

8. In the light of the aforesaid principles and perusal of the record particularly the written statement indicates that the defendants were well aware of the fact regarding the alleged sale of part of the suit property. However, the failure to procure and produce the supporting documents is attributed to the illiteracy and ignorance of law.

9. Apart from the same, there is nothing on record to ascertain whether the petitioners were diligent or made attempts to procure the documents despite pleading the same in the written statement. As such, the Petitioner were aware of the alleged fact, since the beginning of the suit, however, failed to exercise due diligence.

10. Furthermore, it is a settled principle of law that ignorance of law cannot be claimed as a defence. Therefore, in the absence of exceptional circumstance or any other substantial cause, the

Petitioners cannot be permitted to adduce additional evidence at a belated state of appeal.

11. Resultantly, Petition sans merit and the same stands dismissed.

[SACHIN S. DESHMUKH, J.]