

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8893 OF 2025

Abhay Prakash Ahuja .. Petitioner
Versus
Ved Prakash Ahuja .. Respondent

WITH
WRIT PETITION NO. 8894 OF 2025

Abhay Prakash Ahuja .. Petitioner
Versus
Ved Prakash Ahuja .. Respondent

WITH
WRIT PETITION NO. 8895 OF 2025

Abhay Prakash Ahuja .. Petitioner
Versus
Ved Prakash Ahuja .. Respondent

WITH
WRIT PETITION NO. 10013 OF 2023

Abhay Prakash Ahuja .. Petitioner
Versus
Ved Prakash Ahuja and Ors. .. Respondents

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- Mr. Surel Shah, Senior Advocate a/w. Mr. Kunal Bhanage, Mr. Chaitnya Nikte, Advocates i/by Akshay Pawar for Petitioner in All Writ Petitions.
 - Dr. Sanjay Jain a/w. Mr. Hrushi Narvekar, Shaheda Madraswala, Saumya Saurastri and Shyna Saheed, Advocates i/by Vashi and Vashi for Respondents in All Writ Petitions.
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 24, 2026

P.C.:

1. Heard Mr. Shah, learned Senior Advocate for Petitioner in all Writ Petitions and Dr. Jain, learned Advocate for Respondent/s in all Writ Petitions.

2. This is a group of 4 Writ Petitions which challenge and assail interlocutory orders passed by the learned Trial Court in proceedings concerning Licensee Eviction Suit No.71/85 of 2012 pending before the Trial Court. Suit premises is flat No.316, 16th Floor, Samudra Mahal Co-operative Housing Society Limited.

3. Petitioner in all four Writ Petitions is original Defendant No.3 in the Suit proceedings. Petitioner's uncle is the Plaintiff. The Suit is filed for eviction of Petitioner on the premise that Petitioner's late father was the Plaintiff's 'gratuitous licensee' in the suit flat. Defendant No.3 has contested the Suit Plaintiff contending that his late father was not the Plaintiff's 'gratuitous licensee' in the suit flat. Defendant No.3's claim is that his father alongwith Plaintiff were joint co-owner of the suit flat. Trial has begun before the Trial Court and is almost culminated.

4. Briefly stated, during the course of evidence, it is Defendant No.3's case that Plaintiff has admitted that he is in possession of the original title deed i.e. Agreement dated 20.12.1972 in regard to purchase of the suit flat. Copy of this Agreement is appended at page No.201 of the convenience compilation. According to Defendant No.3,

Plaintiff has despite referring to the said Agreement in his Advocate's notice purporting to terminate the gratuitous license in regard to the suit flat has during his evidence not produced the said Agreement despite admitting that it is lying in his possession.

5. Therefore Defendant No.3 summoned witness namely Officer of the Co-operative Society as Defendant Witness (for short "DW4"). The said witness DW4 appeared and produced several documents as appended and seen as per the list at page No.736 – 738. In that list of documents he produced Agreement dated 20.12.1972 as shown at Sr. No.1 of the said list. The said list of documents is exhibited as Exhibit '498' by the learned Trial Court. After the said documents were produced, DW4 filed Application dated 01.04.2024 before the Trial Court below Exhibit '508' seeking a direction to take back the original / certified copies of documents produced by him which was allowed by the Trial Court by order dated 18.04.2024 with a direction that DW4 shall produce the certified copies of the original documents to the Court.

6. Needless to state that this Application was allowed on consent given by Defendant No.3 before the Court. Thereafter Defendant No.3 filed Application below Exhibit '577' seeking a direction to Plaintiff to produce the original Agreement dated 20.12.1972 from his custody. Plaintiff filed Reply to the said

Application agreeing to produce the original Agreement, but only if so directed by the Trial Court, however with a caveat that if the same is allowed to be produced, then Plaintiff should also be permitted to lead evidence on the said document. By order dated 15.03.2025, the learned Trial Court rejected the Application below Exhibit '577' holding that since earlier Application to produce the original Agreement by DW4 was rejected, the present Application was nothing but a delaying tactic adopted by Defendant No.3. Being aggrieved, Defendant No.3 has filed Writ Petition No.8894 of 2025 to challenge the order dated 15.03.2025 passed below Exhibit '577'.

7. Both the learned Advocates have taken me through the facts of the case. It is *prima facie* seen that The trial is underway before the Trial Court. Hence, giving any imprimatur on facts or opinion on merits will be prejudicial to the trial which is withheld. It is seen that that the original Agreement dated 20.12.1972 goes to the root of the matter. It is the assertion of the Plaintiff that by virtue of that document Plaintiff had purchased the suit property in his own name and it forms part of the legal Notice and cause of action stated by the Plaintiff. Whereas it is Defendant No.3's case that the subject property was purchased jointly by Plaintiff and Defendant No.3's father together. This dichotomy can be answered if the original document is produced in trial.

8. It is seen that in the Reply filed by Plaintiff to the Application below Exhibit '577', Plaintiff has categorically agreed to produce the original Agreement, if so directed by the Trial Court and sought permission of the Trial Court to lead evidence on the same, if the same was produced in evidence. This was not objected to by Defendant No.3. In any event if the original document is produced by Plaintiff, the same can undoubtedly be examined by the learned Trial Court. Further it would be proper if both the parties are allowed to lead evidence and evidence in rebuttal against the said document as produced by the Plaintiff in view of the specific claim of Defendant No.3 that the name of Defendant No.3's father is also jointly shown as co-owner alongwith Plaintiff in the said document.

9. The *lis* before the Trial Court is emanating from the fact as to whether the original Agreement dated 20.12.1972 stands singularly in the name of Plaintiff or whether it stands in the joint names of Plaintiff and Defendant No.3 both. Another issue which is the subject matter of the *lis* between parties is whether name of Defendant No.3's father has been interpolated in the original Agreement or otherwise. Undoubtedly the assertion and the denial and the case in rebuttal of the Plaintiff and Defendant No.3 will be based upon the evidence led by both of them respectively once the original document is produced and marked in evidence.

10. Hence, I find no reason as to why Application below Exhibit '577' ought to have been rejected by the Trial Court. On the contrary the said Application ought to have been allowed since Plaintiff himself on his own volition agreed to produce the original Agreement under which the suit flat was purchased by Plaintiff. If that be the case, Plaintiff ought to have been not only allowed to produce the said document, but once he would produce the said document, every opportunity should be given to Plaintiff to lead evidence on the said document and apparently to Defendant No.3 to cross-examine him.

11. Needless to state that if the original document is produced, then the said document would itself speak for itself and the Trial Court would get an opportunity to examine the original document as it stands. This is primarily because of case of Defendant No.3 being that the name of Defendant No.3's father was also appearing and/or added in the original Agreement in regard to the purchase of the suit flat. Once the Plaintiff discharges this burden, then Defendant No.3 can undoubtedly cross-examine the Plaintiff on the said original document produced by him. It is only after Plaintiff produces this document and leads his evidence that the burden will then shift onto Defendant No.3 to prove his case that the name of his father was also appearing as co-owner / joint purchaser of the suit flat and in what circumstances. Once the evidence is led by both the parties on the basis of documentary evidence namely the original document and the

document that shall be produced by Defendant No.3, the Trial Court would undoubtedly be in a better position to determine the *lis* between the parties. To reject the Application filed below Exhibit '577' on the premise that it is delaying the trial is no good. Though the Trial Court was called upon to draw adverse inference against the conduct of Plaintiff, that in my opinion, is not correct. No adverse inference whatsoever can be drawn by the Trial Court, if Plaintiff is himself ready and willing to produce the original Agreement under which the Suit flat was purchased. In any event the Defendant No.3 is also interested in the said Agreement being brought on record as Exhibit. It further forms part of the list of documents also. Plaintiff undoubtedly if he produces the said Agreement should get an opportunity to lead evidence on the same and thereafter Defendant can effectively cross-examine him.

12. In that view of the matter, in so far as the suit claim and the issues that are framed by the learned Trial Court are concerned, it would be in the interest of justice if Application below Exhibit '577' filed by Defendant No.3 stands allowed. Plaintiff has already shown his readiness and willingness in his Affidavit-in-Reply thereto to produce the original Agreement which is directed to be produced before the Trial Court within a period of four weeks from today alongwith Affidavit under Order XVIII Rule 4 pertaining to the said document and nothing more. The Trial Court shall mark the original

Agreement produced by the Plaintiff. Inspection of the said original shall be given to Defendant's Advocate within a period of one week thereafter alongwith copy of the same. Once this exercise is carried out, the learned Trial Court shall permit Defendant to cross-examine the Plaintiff in accordance with law.

13. Let the aforesaid exercise of completion of cross-examination of Plaintiff be completed within a period of four weeks thereafter.

14. In view of the above order, impugned order dated 15.03.2025 stands quashed and set aside thus allowing Application below Exhibit '577' subject to the directions and compliance as directed herein above.

15. All contentions of the parties are expressly kept open and the learned Trial Court shall not be influenced by any of the observations made in this order while determining the *lis* between the parties.

16. Writ Petition No.8894 of 2025 stands allowed and disposed in the above terms.

WRIT PETITION NO. 8895 OF 2025

17. Present Writ Petition is filed by Defendant No.3 to challenge the order dated 26.09.2024. Defendant No.3 filed Application below Exhibit '498' seeking direction to DW4 to bring back the Agreement

dated 20.12.1972 which was filed by the witness in his list of documents exhibited below Exhibit '498' in the Trial Court at Sr. No.1. The said Application is rejected by the learned Trial Court on the ground that when the Society desired to take back the said original documents, Defendant No.3 had given his no objection for return of the said documents. This is the short point involved in this Writ Petition. Once Plaintiff has agreed to produce on record original Agreement dated 20.12.1972 and which is now allowed by this Court by the aforesaid order by allowing Application below Exhibit '577', the grievance of Defendant No.3 in the present Writ Petition does not survive. It is *prima facie* seen that the Agreement of 1972 which is the subject matter of the present Writ Petition is nothing but a counter part of the same original Agreement dated 20.12.1972 received by the Co-operative Housing Society for the record of the Society. That Agreement has already been produced. Copy of the said Agreement is already on record. Grievance of Defendant No.3 is that the copy which is on record is not the photocopy of the original document which was produced by the Society. However, the original Agreement dated 20.12.1972 is now agreed to be produced by Plaintiff and once that is done, the parties are free to argue on their substantive right on the basis of the original document. Therefore no further order is required to be passed in so far as the request made by Defendant No.3 in his Application below Exhibit '535' is concerned since the original

document of Agreement date 20.12.1972 shall be produced by the Plaintiff. That apart, it is seen that Defendant No.3 himself had given his no objection for return of the documents to the Society and it was the duty of Defendant No.3 at the then time to ensure that appropriate inspection was taken by him.

18. In view of the above reasons, order dated 26.09.2024 determining Application below Exhibit '535' does not call for any interference of this Court. Order dated 26.09.2024 is upheld.

19. Needless to state that contentions of both the parties namely Plaintiff and Defendant No.3 are expressly kept open to lead evidence and also evidence in rebuttal on the original Agreement dated 20.12.1972 which goes to the root of the matter to prove title in regard to the suit flat.

20. In view of the above directions, Writ Petition No.8895 of 2025 stands disposed.

WRIT PETITION NO. 8893 OF 2025

21. This Writ Petition impugns order dated 01.10.2024 passed by the learned Trial Court in Application below Exhibit '537' filed by Defendant No.3. Defendant No.3 has sought permission to reexamine witness DW4 on the ground that his evidence is inconsistent and ambiguous in his examination-in-chief and his cross-examination. The

Application stands rejected by the learned Trial Court, *inter alia*, on the ground that the said witness was sought not to be declared hostile and the learned Trial Court has held that there is no ambiguity whatsoever which is pointed out by Defendant No.3 in the evidence of DW4. The said order is appended at page No.1003 of the convenience compilation. I have perused the same. It is *prima facie* seen that adequate chance was given to Defendant No.3 to cross-examine DW4 which was availed by him.

22. Application is filed under Section 138 of the Indian Evidence Act, 1872 for seeking re-examination of the said witness namely DW4. DW4 is the witness who appeared on behalf of the Co-operative Society where the suit flat is located when summoned for furnishing the documents which were taken on record as per the list below Exhibit '498' marked by the learned Trial Court. The documents which were placed on record by him were proved by the witness namely DW4 and the same have been marked in evidence as Exhibits by the learned Trial Court. DW4 was extensively examined with respect to the record of the housing Society pertaining to the suit premises as noted by the learned Trial Court.

23. Record shows that DW4 had joined the Society's office as employee in the year May - 2019 whereas the record which was called upon to be produced by him from the Society's record pertained to the

period from 1979 to 2009 which was maintained by the Society. Undoubtedly this *prima facie* shows that he was not supposed to have any personal knowledge about the execution of the documents between the litigating parties with respect to the suit flat prior to him joining the Society office. Witness DW4 was summoned and expected to produce the relevant record and to answer the questions about the same about which he had personal knowledge or he would answer the same after going through the record maintained by the Society and nothing more. DW4 is not a witness of fact of either of the parties to the *lis*. He was summoned in the capacity of merely as a production witness on behalf of the Society.

24. In that view of the matter, he has given appropriate evidence and now the Application filed below Exhibit '537' seeks to reexamine him seeking clarification of the ambiguity arising out of his cross-examination. It is also seen that the said witness DW4 was cross-examined over period of 12 sessions spanning over 15 months by Defendant No.3 and thereafter he was cross-examined by Plaintiff for a further six sessions. His cross-examination is also placed on record which is extremely extensive in nature. It is *prima facie* seen that the said witness has avoided to give any opinion about the documents, *inter alia*, pertaining to the suit flat which were executed prior to his joining the Society and rightly so. If Defendant No.3 was of the opinion that certain answers given by DW4 were favourable in favour of

Plaintiff, Defendant No.3 had every opportunity to declare the said witness DW4 as hostile and to cross-examine him regarding his doubtful answers which has admittedly not been done by Defendant No.3.

25. In that view of the matter, the scope of re-examination of the witness in such an event been very narrow, it cannot be allowed to be expanded at the behest of the party who feels that further explanation and clarification is required with respect to the answers given by witness on behalf of the Society who has been duly cross-examined by Defendant No.3 and Plaintiff both.

26. I am in complete agreement with the reasons arrived at and findings returned by the learned Trial Court while determining Application below Exhibit '537' in paragraph Nos.5 to 9 and see no reason as to why the same should be disturbed. The order 01.10.2022 is a correct order and the same stands upheld and confirmed. Resultantly, Writ Petition No.8893 of 2025 stands dismissed.

WRIT PETITION NO. 10013 OF 2023

27. Present Writ Petition impugns the order dated 20.12.2022 passed by the learned Trial Court while disposing of Application below Exhibit '459'. By virtue of Application below Exhibit '459' Defendant No.3 desired to call and summon a witness who was the earlier

Advocate on record of the Plaintiff before the Trial Court for the purposes of proving three documents; namely Society's 2 maintenance bills and one receipt, inspection of which was given by the said former Advocate in his office to Defendants before Defendant's filed their written statement.

28. The order dated 20.12.2022 rejects the said Application on the legal premise that in view of Section 126 of the Indian Evidence Act communication between attorney and client are privileged and most importantly the nexus of the said documents which the Defendant No.3 desires to prove through the concerned Advocate cannot be established at all.

29. It is *prima facie* seen that Defendant No.3 desires to prove 2 maintenance bills and one receipt issued by the Co-operative Housing Society in regard to suit flat. Defendant No. 3 had ample opportunity to confront DW4 witness who appeared on behalf of the Society with the said documents which Defendant No.3 failed to do so. The said order dated 20.12.2022 is appended at page No.715 of the convenience compilation. I have perused the same. It is *prima faice* seen that the author of the said articles which is sought to be proved namely two maintenance bills and one receipt is the Society and not the former Advocate of Plaintiff who had given inspection of the said documents. The former Advocate of Plaintiff cannot be a witness of

fact to prove these documents. Section 126 of the Indian Evidence Act is explicitly clear and is not only relied upon but also reproduced in paragraph No.16 of the impugned order. It is *prima facie* clear from a reading of the said provision that no Advocate appearing on behalf of the party is permitted or can be examined as a witness as he is not permitted to disclose any communication made to him in the course of employment as an Advocate. Neither he can be permitted to disclose the contents or condition of any document with which he has become acquainted with in the course of his employment.

30. Defendant No.3 in the Application below Exhibit '459' has sought to examine the Advocate only to the limited extent because he had given inspection of the three documents to Defendant and supplied true copies of the same. Merely because of the above reason, the former Advocate cannot be examined as a witness of fact to decipher the contents of the three documents. Even if the learned Trial Court has after examining the situation rejected the Application on correct legal grounds as appearing in paragraph Nos.16 to 20 of the said order even assuming for the sake of argument that if the former Advocate is examined still the said three documents can never be proved by him since he is not the author of the said documents.

31. That apart, Section 126 of the Indian Evidence Act is clear about summoning the attorney in such a manner. I am in complete

agreement with the findings returned in paragraph Nos.16 to 20 of the order dated 20.12.2022 which do not call for any interference whatsoever thereby upholding and confirming the said order. Application below Exhibit '459' therefore deserves to be rejected and stands rejected correctly.

32. In view of the above, Writ Petition No.10013 of 2023 is dismissed.

33. Considering the aforesaid directions given and the fact that the substantial evidence has been led in the present case, there is no reason for this Court to adhere to any further issue on merits or facts of the matter.

34. It is clarified that this Court has not opined on the merits of the matter.

35. The Suit is of the year 2012. The Suit is therefore expedited by this Court.

36. All contentions of both Plaintiff and Defendant No.3 are expressly kept open.

37. All 4 Writ Petitions are disposed of in terms of the above order.

[MILIND N. JADHAV, J.]

38. Mr. Jain would submit that Plaintiff is more than 90 years old and presently residing in Austria. He would submit that if there is possibility of examining the Plaintiff through video conferencing, the same may be appropriately directed.

39. In view of the above facts, liberty is given to Plaintiff to approach the Trial Court and if such an Application is made, the same shall be considered favourably by the learned Trial Court in accordance with law.

[MILIND N. JADHAV, J.]

Ajay