

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3485 OF 2026

Mukesh Satpal Malhotra

..Petitioner

Versus

Puneet Satpal Malhotra and Ors

...Respondents

Mr. Vineet Naik, Senior Advocate, with Rahul Kothari, i/b Bachubhai Munim and Co, for the Petitioner.

Dr. Virendra Tulzapurkar, Senior Advocate, with Shailendra S Kanetkar, for the Respondents.

CORAM: N. J. JAMADAR, J.

DATE : 9th JUNE 2026

ORDER:

1. By this Petition under Article 227 of the Constitution of India, the Petitioner-Defendant No.1 takes exception to an order dated 21st November 2025, whereby an Application preferred by the Petitioner to re-examine himself, came to be rejected and another order dated 23rd January 2026, whereby the Application preferred by the Petitioner to review the said order, also came to be rejected.

2. Satpal Malhotra was the father of the Petitioner-(D1), Puneet Malhotra (P1/R1) and Ritu Malhotra (D2). Satpal passed away on 27th March 2013 leaving behind Rajendra Mohini, his wife, and Plaintiff No.1 and Defendant Nos. 1 and 2. Rajendra Mohini also passed away.

3. Defendant No.1 has propounded the Will dated 2nd March 2007 and Codicil dated 15th February 2012 of late Satpal. Defendant No.1 has

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also propounded the purported last Will dated 7th February 2014 of Rajendra Mohini.

4. Puneet Malhotra (R1), his wife Seema Malhotra (R5) and their sons and daughters (P2 to P4) have instituted SCS No. 1254 of 2014, for the declarations that the alleged Will dated 2nd March 2007 and Codicil dated 15th February 2012 of late Satpal and the Will dated 7th February 2014 of Rajendra Mohini are illegal and void and for partition of the suit properties; which are stated to be the joint family properties.

5. During the course of the trial, the Plaintiffs led evidence and while Defendant No.1 was under cross-examination, Defendant No.1 filed an application seeking permission to produce five documents namely, another purported original Will of Satpal dated 2nd March 2007 and certified copies of the four registered Release Deeds executed by the Plaintiff No.1 on 31st August 2007.

6. The learned Civil Judge allowed the said Application.

7. The Plaintiffs had assailed the said order in Writ Petition No. 12606 of 2025. By an order dated 30th September 2025, this Court did not interfere with the said order passed by the learned Civil Judge. However, it was clarified that, apart from the cross-examination of Respondent No.1, on the aforesaid documents, the Plaintiff shall have the liberty to adduce further evidence in connection with the

documents, the production of which has been allowed by the learned Civil Judge by the said order.

8. During the pendency of the said Petition, Defendant No.1 filed an Application on 10th August 2025, seeking permission to re-examine Defendant No.1 in the light of the said documents and to place on record the explanation which Defendant No.1 intended to offer in regard to the matters elicited in the cross-examination of Defendant No.1

9. By the impugned first order, the learned Civil Judge, Senior Division, Pune, was persuaded to reject the Application opining that there was no ambiguity in the answers given by Defendant No.1 and thus the re-examination was not warranted. The learned Civil Judge was also of the view that, Defendant No.1 intended to wriggle out of the admissions or change the stand initially taken by Defendant No.1 in response to the questions put during the course of the cross-examination.

10. Defendant No.1 sought review of the order of rejection of permission to re-examine himself. The Review Application was also rejected, opining that there was no error apparent on the face of the record which warranted review.

11. Being aggrieved, Defendant No.1 has invoked the writ jurisdiction.

12. Heard Mr. Vineet Naik, the learned Senior Advocate for the Petitioner, and Dr. Virendra Tulzapurkar, the learned Senior Advocate for the Respondents-Plaintiffs.

13. Mr. Vineet Naik, the learned Senior Advocate for the Petitioner, submitted that the learned Civil Judge completely misconstrued the scope of re-examination under Section 138 of the Indian Evidence Act, 1872. The view of the learned Civil Judge that re-examination can be resorted to only when there was ambiguity in the answers elicited in the cross-examination was plainly incorrect. To this end, reliance was placed on the judgment of Supreme Court in the case of **Rammi Alias Rameshwar Vs State of M.P.**¹

14. Mr. Naik further submitted that, the learned Civil Judge also committed an error in considering the implications of the order permitting the Defendant No.1 to produce the five documents and the import of the observations of this Court in the order dated 30th September 2025; whereby the said order was affirmed. Thus, the trial Court, ought to have permitted Defendant No.1 to re-examine himself in relation to those documents of which the production was allowed. Since Defendant No.1 has specifically spelled out the reasons which necessitated the re-examination of Defendant No.1, though the Defendant No.1 was strictly not enjoined to do so, the learned Civil Judge ought to have permitted Defendant No.1 to re-examine himself.

¹ (1999) 8 SCC 649.

15. In opposition to this, Dr. Virendra Tulzapurkar, the learned Senior Advocate for the Respondents-Plaintiffs would submit that the Application for re-examination was actuated by a design to further delay the disposal of the Suit. It was submitted that as the production of the documents was allowed, the prayer for re-examination in relation to those documents was wholly unwarranted. Secondly, the entire endeavour of Defendant No.1 was to dilute the effect of the admissions elicited in the cross-examination by offering explanation which is the creature of afterthought. Re-examination cannot be used to dilute the weight of the admissions or fill in lacuna in the defence.

16. I have given careful consideration to the submissions canvassed across the bar. At the outset, it is necessary to note that Defendant No. 1 proposes to re-examine himself in relation to 10 statements which were encapsulated by the learned Civil Judge, at statements A to J under paragraph 27 of the impugned order.

17. Mr. Naik submitted that the Petitioner does not press for re-examination as to the statements at point A, C, D, H and I. Thus, the prayer for re-examination is restricted to the statements at point B, E, F, G and J. It was further submitted that the statements at B and G are in relation to documents the production of which has been allowed.

18. The aforesaid submission of Mr. Naik is required to be appreciated in the light of the fact that Defendant No.1 was permitted

to produce the documents, including the Release Deeds, which is referred to in statement at point B and the Will which is referred to in the statement at point G. The mere production of the documents without any opportunity to lead evidence in proof of those documents would be of no use.

19. It is true in the order dated 30th September 2025, this Court had granted liberty to the Plaintiffs to cross-examine Defendant No.1 in regard to the documents which were permitted to be produced and lead further evidence in connection with the documents, the production of which was allowed. However, the said order does not imply that Defendant No. 1 was precluded from leading evidence in connection with those documents. Mere permission to produce documents would be illusory if Defendant No. 1 was not provided an opportunity to lead evidence in connection with those documents. Since those documents were produced after the Defendant No.1 examined himself in chief and while he was under cross-examination, the prayer for re-examination in connection with those documents could have been legitimately granted by the learned Civil Judge.

20. In the case of **Rammi Alias Rameshwar (Supra)**, the Supreme Court has explicated that, there was an erroneous impression that re-examination should be confined to clarification of ambiguities which have been brought down in cross-examination. Undoubtedly,

ambiguities can be resolved through re-examination. But that is not the only function of the re-examiner. If the party who called the witness feels that explanation is required for any matter referred to in cross-examination he has the liberty to put any question in re-examination to get the explanation.

21. Thus, the learned Civil Judge was not justified in evaluating the prayer for re-examination through the prism of existence of ambiguity in the matters elicited during the course of cross-examination only.

22. Moreover, in the facts of the case, in regard to the statements at points B and G, the re-examination appeared to be necessitated in view of the subsequent development in the nature of production of documents.

23. Therefore, this Court is inclined to hold that the rejection of the prayer of re-examination in regard to matters at points B and G under paragraph 27 of the impugned order was unjustified.

24. In connection with the statements at points E and F also, this Court is of the view that the endeavour of Defendant No.1 to offer the explanation was within the ambit of the provisions of Section 138 as clarified by the Supreme Court in the case of **Rammi Alias Rameshwar (Supra)**.

25. The Petitioner-Defendant No.1 professed to offer an explanation as to why the amount was allegedly not paid to Urvashi Sahni, after the

demise of Satpal, and why the amount of Rs.50,00,000/- was not paid to Siya Malhotra.

26. These explanations appeared to stem from the testamentary instruments purportedly executed by Satpal. Thus, the learned Civil Judge should have permitted Defendant No.1 to re-examine himself in regard to the statements at points E and F, as well.

27. In regard to the statement at point J, it would suffice to note that, a suggestion which is denied by a witness does not constitute evidence in the strict sense. Therefore, the further re-examination in relation to the point at J, does not seem legally warranted.

28. The conspectus of the aforesaid consideration is that the prayer of Defendant No.1 to re-examine himself deserves to be partly allowed in relation to the statements at point B, E, F and G only.

29. Hence, the following order:

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(i) The Petition stands partly allowed.

The Petitioner-Defendant No.1 is permitted to re-examine himself in relation to statements at point B, E, F and G, enumerated under paragraph 27 of the impugned order, only.

No costs.

[N. J. JAMADAR, J.]