

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5714 OF 2026

Puneet Satpal Malhotra and Ors ..Petitioners

Versus

Mukesh Satpal Malhotra and Ors ...Respondents

Dr Virendra Tulzapurkar, Senior Advocate, with Shailesh Kanetkar, for the Petitioners.

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

CORAM: N. J. JAMADAR, J.

DATE : 16th JUNE 2026

P.C.:

1. Heard Dr Virendra Tulzapurkar, the learned Senior Advocate for the Petitioners and Mr. Vineet Naik, the learned Senior Advocate, for the Respondents.

2. The challenge in this Petition is to an order dated 11th March 2026 passed by the learned Civil Judge, Senior Division, Pune, whereby an Application preferred by the Respondent No.1 (D1) to lead secondary evidence in respect of the Codicil dated 15th February 2012 of late Satpal Malhotra, came to be allowed, and the said Codicil has been admitted in evidence and marked as exhibit.

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3. Dr. Virendra Tulzapurkar, the learned Senior Advocate for the Petitioners submitted that Defendant No.1 has not proved the Codicil in evidence though assertions were made in paragraph 150 of the Affidavit in lieu of the examination-in-chief of Defendant No.1, that original Codicil was lost and its copy was available with Defendant No.1. Thus, the learned Civil Judge while deciding the objection raised to the proof of said Codicil during the course of examination-in-chief of Dr. Vinod Shah (DW-2), had held that since original Codicil was not produced on record, the copy of the Codicil cannot be admitted in evidence. It was, therefore, not open for the learned Judge to again admit the copy of the Codicil in evidence and mark it as an exhibit by permitting Defendant No.1 to lead secondary evidence.

4. It is imperative to note that the Petitioners-Plaintiffs seek a declaration in regard to the very Codicil. The existence of the Codicil, as such, thus can hardly be put in contest.

5. In paragraph 150 of the Affidavit in lieu of examination-in-chief, the Defendant No.1 has laid adequate foundation for leading the secondary evidence. The learned Civil Judge has clarified that the circumstances on account of which the said Codicil was not admitted in evidence during the course of evidence of witness, Dr. Vinod Shah (DW2), in as much as, the attention of the Court was not drawn to the

asserterations in paragraph 150 of the Affidavit in lieu of examination-in-chief of Defendant No.1.

6. Thus, this Court does not find any infirmity in the impugned order to the extent, the learned Civil Judge permitted Defendant No.1 to lead secondary evidence in respect of the said Codicil and admit the said document in evidence.

7. It is however clarified that the question as to whether the Codicil has been duly proved in evidence is a matter to be determined by the learned Civil Judge on the basis of the evidence adduced by the parties as it is trite that mere exhibition of the document is not the proof of document.

8. Subject to the aforesaid clarification, the Petition stands disposed.

[N. J. JAMADAR, J.]