



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 2392 OF 2025

Ramdas S/o. Namdeo Adhau (Dead)
Smt. Dwarkabai W/o. Ramdas Adhau (Dead)
Through L.Rs.,

- 1) Sanjay S/o. Ramdas Adhau,
Age : 55 Years, Occu. : Agriculturist,
R/o. Andura, Tq. Balapur, Dist. Akola.
- 2) Sau. Rekha W/o. Suresh Yenkar,
Age : 50 Years, Occu. : Household Work,
R/o. Channi, Tq. Patur, Dist. Akola.
- 3) Gajanan S/o. Ramdas Adhau,
Age : 42 Years, Occu. : Agriculturist,
R/o. Andura, Tq. Balapur, Dist. Akola.
- 4) Sau. Mangala W/o. Ganesh Karangale,
Age : 45 Years, Occu. : Household Work,
R/o. Dhashi-Palasi, Tq. Sangrampur,
Dist. Buldhana.
- 5) Sau. Vandana W/o. Suresh Rakhonde,
Age : 39 Years, Occu. : Household Work,
R/o. Belkhed, Tq. Telhara,
Dist. Akola.
- 6) Sau. Ujwala W/o. Prashant Wankhade,
Age : 35 Years, Occu. : Household Work,
R/o. Warwat Bakal, Tq. Sangrampur,
Dist. Buldhana.

.... Petitioners

VERSUS

- 1) Smt. Deokabai Devidas Adhau,
Age : 58 Years, Occu. : Household,
R/o. Mothi Umari, Vishwakarma Nagar,
Akola, Dist. Akola.

- 2) Santosh Devidas Adhau,
Age : 48 Years, Occu. : Private Job,
R/o. Mothi Umari, Vishwakarma Nagar,
Akola, Dist. Akola.
- 3) Sunil Devidas Adhau,
Age : 42 Years, Occu. : Hotel & Lawn,
R/o. Mothi Umari, Vishwakarma Nagar,
Akola, Dist. Akola.
- 4) Prashant Devidas Adhau,
Age : 37 Years, Occu. : Private Job,
R/o. Mothi Umari, Vishwakarma Nagar,
Akola, Dist. Akola.
- 5) Sau. Sangita Nivrutti Dhakolkar,
Age : 45 Years, Occu. : Household,
R/o. Vashinba, Tq. & Dist. Akola.

.... Respondents

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Advocate for Petitioners : Mr. B.G. Raut

Advocate for Respondents : Mr. N.A. Parwani h/f. Mr. U.J. Deshpande

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CORAM : PRAFULLA S. KHUBALKAR, J.

Dated : 28th JANUARY 2026

JUDGMENT :

1. Heard.

2. **Rule.** Rule is made returnable forthwith and by consent of learned Advocates appearing for the parties, the petition is taken up for final disposal.

3. By this petition, the petitioners have challenged the order dated 01.04.2025, passed by Civil Judge Junior Division, Balapur, in Regular Civil Suit No.07 of 2016, at Exhibit 55, rejecting the application for de-exhibiting the document of sale-deed dated 07.01.1986, which was exhibited during evidence of the plaintiff.

4. The petitioners are original defendants in the suit filed by the respondents, seeking possession, permanent injunction and mesne profits. During the course of evidence, a copy of sale-deed dated 07.01.1986 is exhibited and marked as Exhibit 48 and the suit was proceeded further. The defendants in the suit, thereafter, filed an application for 'de-exhibiting Exhibit 48, copy of alleged sale-deed dated 07.01.1986'. This application was opposed by the original plaintiffs (respondents in the petition), by its reply dated 01.01.2025. The trial court, *vide* order dated 01.04.2025, rejected the application and the original defendants-petitioners have challenged the said order by way of instant petition.

5. Learned Advocate for the petitioners submitted that the document of sale-deed dated 07.01.1986 is exhibited without there being any pleadings in the plaint about the said sale-deed. He submitted that since the earlier application filed by the plaintiffs to

lead secondary evidence was rejected, the document of sale-deed cannot be exhibited and it cannot be treated to be proved document. In support of his submissions, learned Advocate for the petitioners has relied upon judgment of the Hon'ble Full Bench of this Court in the case of *Hemendra Rasiklal Ghia Vs. Sobodh Mody, [2009 AIHC 2061]*.

6. Opposing the petition, learned Advocate for the respondents submitted that the application filed by the defendants at Exhibit 55, for de-exhibiting the document of sale-deed deserved to be rejected since there is no provision for de-exhibiting a document which is marked as exhibit. He submitted that, in the instant case, the document of sale-deed is marked as exhibit only for identification purpose and same is not to be treated as proved document, as observed by the trial court in the impugned order. He, therefore, opposed the petition and justified the impugned order.

7. While considering the controversy involved, it has to be seen that the original defendants filed an application at Exhibit 55, for de-exhibiting the document of sale-deed dated 07.01.1986. It has to be noted that while exhibiting the document of sale-deed, Counsel for the defendants was present in the court, however, he had not raised

any objection about exhibiting the said document. Although learned Advocate for the petitioners has submitted that the document of sale-deed is exhibited in absence of any pleadings in the plaint, it has to be noted that the document is exhibited only for identification purpose, as categorically observed by the trial court and the exhibition of the said document does not amount to proof of all the contents of the said document.

8. As regards the presence of Counsel for the defendants at the time of exhibiting the document of sale-deed, learned Advocate for the respondents submitted that an attempt is made by the Counsel for the defendants to contend that on the said date i.e. on 08.10.2024, he was not present in the court and even an affidavit dated 28.01.2026, is filed on record in that regard. Although the petitioners have attempted to contend that their Counsel was not present at the relevant time, however, there is nothing on record to contradict the observations of the trial court, neither the order sheet is produced on record to prove otherwise. Pertinent to note, after the document was exhibited and the matter was adjourned to 19.11.2024, the application at Exhibit 55 was filed on 18.12.2024.

9. Pertinent to note, the application for de-exhibiting the document of sale-deed was not filed immediately on next date, but it

was filed on 18.12.2024 and in the said application, the defendants have not at all stated that their Counsel was not present on the day, on which the document was exhibited. As such, the contentions of the Counsel for the defendants that he was not present at the time of exhibition of said document cannot be accepted at this stage.

10. By the impugned order, the trial court has observed that the document of sale-deed dated 07.01.1986, is marked only for identification purpose and the said document cannot be considered to be proved. It is relevant to have look at the judgment of the Hon'ble Full Bench of this Court in the case of **Hemendra Ghia (Supra)**, from which paragraph No.61 is reproduced below.

“61. Considering the provisions of law referred to above, it is not possible to reject the document admitted and exhibited in terms of Rule 4 in exercise of powers under Rule 6 of Order XIII of C.P.C. A document can be exhibited in evidence only when such a document is admissible in evidence and not otherwise. If admissible document is exhibited on establishing its proof then such document cannot be de-exhibited or rejected. This is abundantly clear from the provisions of law contained in Rules 4 and 6 of Order XIII read with Para-524 of the Civil Manual. In fact, provisions of law contained in Rule 4 are to be read with Rule 6 of Order XIII of C.P.C. and cannot be considered to be referable to two different stages. The question of exhibiting the document under Rule 4 can arise only if the document is found to be admissible in evidence and in case it is found to be not admissible, the same is to be rejected in terms of Rule 6 of Order XIII read with para-524 of Civil Manual. There is no provision enabling the Court to postpone the objection regarding admissibility or proof of

document, as such one can safely rule that the question as to admissibility of document should be decided at it arises and should not be reserved until the judgment of the case is given.”

11. In view of the position of law as laid down in the case of **Hemendra Ghia (Supra)** and considering the peculiar facts of the instant case, it has to be noted that although the document of sale-deed dated 07.01.1986 is exhibited, the exhibition of the said document be treated only for identification purpose. Mere exhibition of the said document cannot be treated as proof of all the contents of the said document. The parties are entitled to submit arguments about the admissibility of said document by raising appropriate contentions and the trial court is entitled to decide the admissibility of said document while appreciating the evidence on record.

12. Having regard to the above mentioned factual and legal aspects, I do not find any necessity to interfere with the impugned order. Therefore, no indulgence is warranted under Article 227 of the Constitution of India with the impugned order. Hence, the writ petition is dismissed with no order as to costs. Rule stands discharged.

[PRAFULLA S. KHUBALKAR]
JUDGE