



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 5186 OF 2025

Ravi Balu Dudhe, aged 65 years, Occ: Business,
R/o Digras, Tq. Digras, District Yavatmal.

PETITIONER

VERSUS

1. Shreyas Ravi Dudhe, Aged Major, Occ: Education,
R/o Near Nagina Masjid Digras, Tq. Digras, Dist.Yavatmal.
2. Sachin Paratapsingh Ade, Aged 50 years, Secretary,
Vasant Education Society, Warandali, Tq. Digras,
District Yavatmal.
3. Purushotaam Ashok Ambarkar, Aged 50 years,
R/o Krushna Roaring Centre Road Wadgaon, Arni
Road yavatmal, Tq. and District Yavatmal.

RESPONDENTS

Shri Anand S. Deshpande, counsel for the petitioner.
Shri V.N. Patre, counsel for the respondent no.2.
Shri T.J. Patil, counsel for the respondent no.3.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : JANUARY 28, 2026

ORAL JUDGMENT

RULE. Rule is made returnable forthwith and heard finally with consent of the learned counsel for the parties.

2. The petitioner's grievance is against the order dated 25.07.2025 passed by the trial Court rejecting the application at Exhibit 247 for permission to examine the Land Acquisition Officer, Yavatmal as witness in the suit.

3. The petitioner is the original defendant no.2 in the suit for partition and separate possession filed by the respondent no.1. At the stage of evidence of defendants, after examining one witness, the defendant no.2 filed an application at Exhibit 247 for issuance of witness summons to the Land Acquisition Officer, Yavatmal by contending that the said witness is a material witness. The said application was resisted by the plaintiff and it came to be rejected by order dated 25.07.2025, which is subjected to challenge by way of instant petition.

4. The learned counsel for the petitioner submits that the impugned order deprives the petitioner from leading evidence of a material witness which is relevant for deciding the controversy involved in the suit. He submits that in accordance with the provisions of Order 16 Rule 1 of the Code of Civil Procedure, 1908 (for short, 'the Code'), the parties are entitled to summon any witness in support of their case and the impugned order is passed by ignoring the valuable right of the parties.

5. Opposing the petition, the respective learned counsel for the respondent nos.2 and 3 submitted that the trial Court has rightly observed that the defendant no.2 is entitled to lead evidence in his independent suit being Special Civil Suit No.4 of 2009 and cannot insist for examining the said witness in the instant case. They therefore supported the impugned order.

6. While considering the controversy, it has to be seen that the petitioner, who is the defendant no.2 in the suit, wants to examine the Land Acquisition Officer, Yavatmal for bringing on record the factual aspects about the land acquired from the suit property. A perusal of the application filed by the defendant no.2 shows that the same was filed for grant of permission to examine the Land Acquisition Officer, Road Project No.2, Yavatmal. As such, the application contains details of the witness to be examined. Despite this, the trial Court has observed that the application does not contain the details about the identity of the witness and the application was found to be vague. It has to be noted that the evidence of the defendants has started and only one witness is examined on their behalf and at that stage, the application at Exhibit 247 was filed. While rejecting the application, the trial Court has observed that the petitioner has filed a separate suit being Special Civil Suit No.4 of 2009 and he is entitled to examine the witness in the said suit which is pending. However, it has to be noted that the petitioner is entitled to independently examine his witness in any of the cases. Apart from this, it is pointed out that the said civil suit is already decided finally and as such, the petitioner is now entitled to examine the witness in the instant suit itself. The reasons recorded by the trial Court in this regard that the defendant no.2 should examine the witness in other suit does not appear to be sound. Having regard to the provisions of Order XVI Rule 1 of the Code and further considering the fact that Special Civil Suit No.4 of 2009 is already decided, I am of the firm view that the

petitioner/defendant no.2 is entitled to examine the witness in support of his case. The other side ie entitled to cross-examine the said witness. There is no other impediment. Hence, the impugned order is unsustainable in law.

7. Having regard to the above mentioned factual and legal aspects, the following order is passed:-

- I. The writ petition is allowed.
 - II. The order dated 25.07.2025 passed by the trial Court on an application at Exhibit 247 in Special Civil Suit No.1 of 2009 is quashed and set aside. The application filed by the defendant no.2 at Exhibit 247 in Special Civil Suit No.1 of 2009 is allowed.
 - III. The trial Court is directed to decide Special Civil Suit No.1 of 2009 expeditiously and preferably within a period of four months.
8. Rule is made absolute in aforesaid terms. No order as to costs.

(PRAFULLA S. KHUBALKAR, J.)