



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

WRIT PETITION NO.6508 OF 2025

GOPAL RAJU NEMADE
VERSUS
SUDAM SHRAVAN NEMADE AND ANOTHER

<i>Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders</i>	<i>Court's or Judge's orders</i>
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Mr. C.R. Kulkarni, Advocate for Petitioner.
Mr. V.P. Ghayal, Advocate for Respondent No.1.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATED : 12th FEBRUARY 2026

PER COURT :-

1. Heard learned Advocate for the petitioner.
2. The petitioner's challenge is to the order dated 12.09.2025, passed by Joint Civil Judge Junior Division, Akot, in R.C.S. No.115 of 2015, rejecting the application at Exhibit 85, filed by the plaintiff (petitioner herein) for permission to examine a witness at the stage of final hearing of the suit.
3. Learned Advocate for the petitioner submits that the petitioner/plaintiff wanted to examine an attesting witness to the Will dated 02.01.1998, which is a registered document. He submits that

the plaintiff desires to examine the witness, who is only an attesting witness to the Will. He submits that, in the application at Exhibit 85, it was specifically mentioned that the said attesting witness was present during the stage of evidence, however, only because the presiding officer expressed an opinion that in absence of any challenge to the Will, there was no need to examine the witness and therefore, the said witness was not examined. He, therefore, submits that the evidence of said witness is vital and the plaintiff ought to have been allowed to examine the said witness.

4. Perusal of the impugned order shows that the trial court while passing the impugned order recorded that the application at Exhibit 85 was filed after the final arguments of parties were over and in view of the submissions made by the defendants at the stage of final hearing, it was revealed to the plaintiff that the document of Will was not properly proved and therefore, to fill up the lacuna, the application at Exhibit 85 was filed by the plaintiff.

5. Undisputedly, the application at Exhibit 85 for permission to examine the witness under Order XVIII Rule 17 of the Code of Civil Procedure was filed at the stage of final hearing of the civil suit. The instant suit is a suit seeking declaration, possession and inquiry into mesne profits with respect to the sale-deed dated 03.03.2009. The

parties have led the evidence in support of their respective case and after the arguments were advanced by the defendants in the suit, the application was filed by the plaintiff to examine a new witness. On consideration of the entire controversy, it is clear that the application was filed to fill up the lacuna, which were pointed out by the defendants during cross-examination. Apart from this, it has to be noted that there is no satisfactory reason mentioned in the application at Exhibit 85, demonstrating any bonafides or due diligence on the part of the plaintiff to demonstrate as to why steps were not taken to examine the witness at the relevant time.

6. Having considered the reasons recorded by the trial court, I find the same to be sound and without showing any perversity. Hence, no interference is warranted with the impugned order. The writ petition is accordingly dismissed with no order as to costs.

(PRAFULLA S. KHUBALKAR, J.)

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