



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

WRIT PETITION NO.1133 OF 2026

PETITIONER
(ORI. PLAINTIFF)

- 1) Sheshrao Ramkrishna Patil, Age:- 40 Yrs, Occ.- Agriculturist, R/o Sukali, (Mahaispur) Tq. Barshitakali, District Akola Through It's L.R's.
 D-1 Smt. Chitra Sheshrao Patil (Hage), Aged about 63 years, Occu. Houswife
 D-2 Ranjeet Sheshrao Patil (Hage), Aged about 38 years, Occu. Agriculturist,
 D-3 Abhijee4t Sheshrao Patil(Hage), Aged about 35 years, Occu. Agriculturist
 D-4 Ku. Sweta Sheshrao Patil (Hage) Aged about 32 years, Occu. Agriculturist
 All R/o Adarsh Colony, Hirabai Plot, Akola Tq. Dist. Akola
- 2) Ranjeet Sheshrao Patil (Hage), Aged about 38 years, Occu. Agriculturist, R/o. Sukali (Mahaispur, Tq. Barshitakali, District Akola
 R/o. Adarsha Colony, Harabi Plot, Akola Tq. Dist. Akola

...VERSUS...

RESPONDENTS

Name of respondent No.1 is
 deleted as per Court's
 Order dated 17.04.2026

- 1) Smt. Gayabai Wd/o Rambhau Patil, Aged 55 Years, Occu. Agriculturist, R/o. Sukali, (mahaispur) Tq. Barshitakali, District Akola
- 2) Sau. Suman W/o. Shankarrao Patil (Kale, Aged 35 Years, Occu. Agriculturist, Both R.o Flat No. 9, Tale Apartment No. 6, Savantwadi, Ranpise Nagar, Akola - 444001

Mr. M.R. Deshpande, Advocate for Petitioner.
Mr. S.P. Rajurkar, Advocate for Respondent No.2.

CORAM : PRAFULLA S. KHUBALKAR, J.
DATE : 17/04/2026

ORAL JUDGMENT :

1. **RULE.** Rule is made returnable forthwith. Heard finally with consent of the learned counsel for the respective parties.
2. By this petition, the petitioners have challenged the orders passed by the Trial Court dated 19.12.2025 passed on an application at Exh.285, order dated 05.01.2026 passed on an application at Exh.287, order dated 13.01.2026 passed at Exh.1 closing the evidence of the defendant and the order dated 22.01.2026 rejecting the application for grant of time to challenge the orders passed by the Trial Court.
3. Petitioners are the original defendants in the suit filed by the respondents, seeking declaration, permanent injunction and possession claiming the declaration that they are the exclusive owners of the property bearing Gat No.109, Gat No.155 and Gat No.127 situated at Mouza : Sukali, (Mahaispur) Tq. Barshitakali, District Akola.

4. In the suit, the plaintiff have also prayed for a decree of possession with respect to these properties along with mesne profits. The defendants appeared in the suit and filed their written statement and the matter proceeded for the stage of evidence. During the evidence of the defendant's witness Mr. Abhijeet Sheshrao Patil, who is a legal heir of original defendant No.1, certain questions were put to him regarding a document of relinquishment deed executed by Ms. Mankarnabai Rambhau Patil (Hage), who was wife of one of the brother's from the family of the parties. After the cross-examination of this witness, which was conducted on 11.12.2025, the defendants filed an additional evidence of the same witness i.e. Mr. Abhijeet Sheshrao Patil on 23.12.2025, which pertains to the document of relinquishment deed and possession receipt dated 12.11.1983 executed by Ms. Mankarnabai Rambhau Patil (Hage).

After filing this additional evidence, the defendant filed an application dated 15.12.2025 for exhibiting the original document of relinquishment deed at Exh.285. Apart from this, defendants also filed a separate application dated 23.12.2025 (at Exh.287) for permission to lead additional evidence of defendant's witness. This application came to be opposed and the Trial Court had passed an Order dated 05.01.2026 and

rejected the application at Exh.287 and by a separate order dated 19.12.2025, the application at Exh.285 also came to be rejected.

5. Apart from this, the Trial Court has passed an order below Exh.1 dated 13.01.2026 and thereby, closed the evidence of the defendants. In this background, the defendants filed a separate application for time to challenge these orders before the Appellate Authority (at Exh.291), which came to be rejected by an Order dated 22.01.2026. As a consequence of these orders, the evidence of the defendants is closed and the defendants have been refused permission to lead additional evidence with respect to the relinquishment deed. Therefore, the defendants have filed the instant petition challenging all these orders.

6. The primary contentions canvassed on behalf of plaintiffs (respondents to the instant petition) is that the applications are filed by the defendants to fill up the lacunae in their evidence and in absence of any pleadings with respect to the document of relinquishment deed, the defendants cannot be allowed to lead evidence.

7. Learned counsel for the respondent No.2 vehemently submitted that the original defendant No.1 Mr. Sheshrao S/o. Ramkrishna

Patil (Hage), had not at all pleaded anything about the document of relinquishment deed executed by Ms. Mankarnabai Rambhau Patil (Hage), neither he filed any such document along with his written statement and as such, the DW-1 namely Mr. Abhijeet Sheshrao Patil, cannot be now permitted to file the said document on record. He submits that the attempt of the defendants to lead evidence on the document of relinquishment deed will only enable them to lead a new evidence and it will cause serious prejudice to the rights of the plaintiff.

8. The main issue which falls for consideration is whether the defendants be permitted to lead additional evidence with respect to the document of relinquishment deed executed by Ms. Mankarnabai Rambhau Patil (Hage). It has to be noted that the document of relinquishment deed was not earlier filed by the defendants, neither they have incorporated any pleadings about the said document, however, during the cross-examination of the defendant's witness, pertinent questions are put to the witness with respect to the document of relinquishment deed executed by Ms. Mankarnabai Rambhau Patil (Hage). It has also to be noted that the witness was questioned as to whether, he has filed any such document on record, which was denied by him as the document was not filed on record at that time. However, after evidence of the said witness recorded on

11.12.2025, the defendant filed an additional evidence on next date i.e. on 23.12.2025 and made several statements on oath with respect to the document of relinquishment deed dated 12.11.1983.

9. Thus, in view of the cross-examination conducted by the plaintiffs, it became clear that the document of relinquishment deed was relevant and required to be considered for deciding the controversy involved in the suit. Apart from this, before the evidence of the defendants was closed, they had filed the additional evidence in support of their defense and on that basis, filed an application for permission to adduce additional evidence (at Exh.287) and application for exhibiting the original relinquishment deed (at Exh.285). The Trial Court has rejected these applications by observing that the defendants have not pleaded in their written statement about the said document and the document was not produced on record earlier. The Trial Court has also observed that the document is not registered, it is not on stamp-paper and not attested by witnesses and by considering those aspects, the Trial Court has rejected the application for exhibiting the original document of relinquishment deed.

10. While considering the application for permission to lead additional evidence, the Trial Court has observed that the defendants are

attempting to fill up the lacunae and in absence of any pleadings about the document of relinquishment deed, the defendants need not be granted permission to lead additional evidence. The Trial Court has also observed that the defendants have not shown that the document was produced from proper custody. Pertinent to note that the Trial Court has rejected these applications by observing that the suit is already made time bound by this Court and therefore, has directed that the evidence of the defendants be closed and further, refused to grant time to the defendants to challenge these orders.

11. It has to be noted that although there are no pleadings in the written statement, however, the plaintiffs have cross-examined the defendant's witness and had put several questions about the document of relinquishment deed. In this background, the defendants had filed the additional evidence on affidavit. In this regard, the reliance placed by the defendants on provisions of Order VIII Rule 1A of Code of Civil Procedure, 1908 (hereinafter for short referred to as "CPC") seems relevant. The provisions of Order VIII Rule 1A Sub-Rule 2 and the provisions of Sub-Rule 3 are reproduced as follows :-

“(2)Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit .

12. As such, in view of the fact that the document of relinquishment deed was not earlier filed on record, the defendants were required to state as to in whose possession the said document was and after seeking leave of the Court can produce the said document. In the instant case, in view of the cross-examination of the defendant's witness, the defendants have produced the document of relinquishment deed, which was in their custody and have prayed for permission to lead evidence for proving the said document. In this regard, it is fruitful to refer to the position of law laid down by the Hon'ble Supreme Court of India in the matter of *Sugandhi (Dead) by Legal Representatives and Another Vs. P Rajkumar represented by his Power Agent Imam Oli* reported in *(2020) 10 Supreme Court Cases 706*, on which counsel for petitioners has placed reliance. While dealing with the provisions of the Order VIII Rule 1A of CPC, the Hon'ble Supreme Court has recorded its observations in para Nos.8 and 9, which are reproduced below :-

“8. Sub-rule (3), as quoted above, provides a second opportunity to the defendant to produce the documents which ought to have been produced in the court along with the written statement, with the leave of the court. The discretion conferred upon the court to grant such leave is to be exercised judiciously. While there is no straitjacket formula, this leave can be granted by the court on a good cause being shown by the defendant.

9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the court should take a lenient view when an application is made for production of the documents under sub-rule (3)”

13. Applying the legal position to the instant matter, it has to be noted that the document of relinquishment deed is relevant and necessary for deciding the actual controversy involved in the suit. Although there are no pleadings about the said document in the written statement, however, the defendants have submitted an additional evidence and have sought for permission to lead evidence to prove the said document. In my opinion, the defendants have properly taken recourse to the provisions of Order VIII

Rule 1A of CPC and since, the evidence of defendants was not closed, interest of justice demanded that they should be granted an opportunity to lead evidence.

14. Perusal of the impugned order shows that the Trial Court has rejected the applications by observing that there are no pleadings about the said document of relinquishment deed and neither the document was filed on record. The reasons recorded by the Trial Court are not at all justified since, undisputedly there were no pleadings and the document was not filed earlier but the necessity to file the document arose in view of the cross-examination of the defendant's witness. As such, the reasons recorded by the Trial Court are not at all convincing. Further, it appears that the Trial Court has rejected the applications also because the matter was made time bound by this Court. Although, the Trial Court is duty bound to decide the matter expeditiously and within the time frame provided by this Court, however, the parties to the suit cannot be deprived from their right to lead evidence by raising legitimate pleas to protect their interest in the suit.

15. It is settled position of law that the procedure is handmaid of justice and procedural technicalities shall not come in the way of the Court while doing substantial justice.

16. In view of the above mentioned factual and legal aspects, I am of the firm opinion that the defendants are entitled for grant of an opportunity to lead evidence on the document of relinquishment deed. The impugned orders passed by the Trial Court therefore, deserved to be quashed and set-aside. As regards, the application of the defendants for exhibiting the original document (at Exh.285), the Trial Court needs to be directed to consider the application afresh in the light of the defendants' entitlement to lead the evidence on the document of relinquishment deed. Hence, I pass the following Order :-

ORDER

- i. The Writ Petition is **allowed**.
- ii. Order dated 05.01.2026 passed by the Trial Court on the application for grant of permission to lead additional evidence of DW-1 at Exh.287, is quashed and set-aside.
- iii. Application for grant of permission to adduce additional evidence of DW-1 at Exh.287, is **allowed**.
- iv. Order dated 19.12.2025 passed by the Trial Court on the application for exhibiting the original document of relinquishment deed at Exh.285, is quashed and set-aside and the Trial Court is directed to consider the said application afresh, after giving an opportunity of hearing to both the parties.

v. Order dated 13.01.2026 passed by the Trial Court at Exh.1, is quashed and set-aside.

17. Rule is made absolute in above said terms.

(PRAFULLA S. KHUBALKAR, J.)

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