



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

WRIT PETITION NO. 2557 OF 2026

Jaydev s/o Laxman Shende (dead) Thru. LRs.

Vs.

Mahendra s/o Madhukar Mahale (dead) Thru. LRs

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. J.B. Gandhi, Advocate for petitioners.

Mr. A.M. Tirukh, Advocate for respondent Nos.1 to 3.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : 01.04.2026

Heard learned counsel for the petitioners as
well as the respondent Nos.1 to 3.

2. The petitioner's challenge is to order dated 11.03.2026 passed by the learned trial Court rejecting the application for permission to examine a witness by name Smt. Sindhutai Jaideorao Shende as a witness for the purpose of proving signature of the executant namely Pandhari Maroti Shende on the document of Will dated 09.01.1981.

3. Learned counsel for the petitioners submits the petitioners, who are the legal heirs of the original defendant in the suit wanted to examine the witness by

name Smt. Sindhutai Jaideorao Shende to prove the signature of the executant, since the executant as well as the witnesses to the Will have already expired and in accordance with Section 69 of the Indian Evidence Act, the petitioners are entitled to lead the available evidence. He submits that this application was submitted in the suit which is being decided after the remand of the matter by the appellate Court by judgment and order dated 30.06.2025. He also submitted that the appellate Court had remanded the matter to the trial Court for granting an opportunity to the defendants in the suit to examine the witnesses which were sought to be examined by their earlier application (Exhibit 90). He submitted that considering the reasons recorded by the appellate Court mainly for granting an opportunity to the defendants to prove the document and by considering the purport of Section 69 of the Indian Evidence Act, the defendants are now entitled to examine the witnesses mentioned in the said application at Exhibit 90 and one more witness so that the signature of the executant could be proved.

4. Mr. Tirukh, learned counsel for the respondents vehemently opposed the petition and submitted that the appellate Court had remanded the matter to the trial Court for affording an opportunity to the defendants to examine only the named witnesses which were mentioned in the application at Exhibit 90.

The defendants attempt to examine an additional witness is beyond the scope of remand and an attempt to prolong the matter. He also submitted that the defendants had earlier filed a separate application to examine the same witness i.e. Smt. Sindhutai Jaideorao Shende to prove the signature of her husband which was at Exhibit 114 in the civil suit, and the said request was rejected by order dated 09.02.2026 with costs. He therefore submits that the attempt to examine the same witness is misuse of the provisions of the law.

5. While considering the controversy it has to be seen that the appellate Court while remanding the matter had granted an opportunity to the defendants to examine the witnesses by considering the provisions of Section 69 of the Indian Evidence Act. Undisputedly, the executant as well as witnesses to the document of Will have expired and therefore, the defendants are entitled to take recourse to Section 69 of the Indian Evidence Act. Even the appellate Court has categorically observed while recording the reasons for remand that the defendants need to be granted an opportunity to examine material witnesses to prove the document of Will dated 09.01.1981. It has also to be noted that the trial of the suit is already expedited by this Court and the impugned order also refers to the directions about expeditious decision of the civil suit. Pertinently, the time likely to be consumed in the process of examining

additional witness is also one of the reasons for rejecting the application. In this regard, learned counsel for the petitioner, on instructions, makes a statement that in the event an opportunity is granted to the defendants to examine the witness, he will examine the said witness on the next date before the trial Court, without seeking any adjournment in that regard. He also states, on instructions, that apart from this witness i.e. Smt. Sindhutai Jaideorao Shende, the defendants will not examine any other witness to prove the document of Will.

6. Having regard to the entire controversy, by considering the purport of Section 69 of the Indian Evidence Act and the very reasons recorded by the appellate Court to grant an opportunity to the defendants to examine the witnesses to prove the document of Will, denying an opportunity to the defendants to examine the additional witness i.e. Smt. Sindhutai Jaideorao Shende to prove the signature of the executant, would be a hyper technical approach.

7. Further, it has to be noted that grant of an opportunity to the defendants to examine the witness, at this stage, would avoid further multiplicity of proceedings and therefore, the defendants need to be granted an opportunity to examine the witness Smt. Sindhutai Jaideorao Shende.

8. In view of this, the writ petition is allowed. The impugned order dated 11.03.2026 is quashed and set aside. The petitioners/defendants are directed to examine the witness Smt. Sindhutai Jaideorao Shende on next date before the trial Court without seeking any further adjournment.

9. In view of this, the writ petition is disposed of. No order as to costs.

(Prafulla S. Khubalkar, J.)