



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8080 OF 2022**

Mr. Jijabhau Dyaneshwar Temgire ... Petitioner

Age : 50 Years, Occupation : Business

R/a-Thorandale, Taluka – Ambegaon

Dist - Pune

Vs.

1. Mr. Gangaram Khandu Temgire

Age : 33 years, Occupation : Business

R/a-Thorandale, Taluka – Ambegaon

Dist – Pune

2. Mr. Malini Shantaram Neharkar

Age : 45 years, Occupation : Housewife

R/a-Thorandale, Taluka – Ambegaon

Dist – Pune

3. Mr. Vivek Arun Sathe

Age : 31 years, Occupation : Service

R/a – Sathe Chawl, Station Road

Pimpri, Pune-18

4. Mr. Jeevan Jijabhau Temgire

Age : Adult, Occupation : Business

R/a-Thorandale, Taluka – Ambegaon

Dist – Pune

... Respondents

Mr. Mateen Shaikh a/w. Mr. Shrinivas Kshirsagar, Mr. Parvez

Inamdar and Ms. Muskan Shaikh for the Petitioner.

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Mr. P. J. Thorat i/b. Mr. Prabhanjan Gujar for Respondent Nos. 1 to 3.

CORAM : GAURI GODSE, J.

RESERVED ON : 13th NOVEMBER 2025

PRONOUNCED ON : 4th MARCH 2026

JUDGMENT:

Basic Facts:

1. This petition is filed by defendant no. 1 to challenge the order passed by the trial court rejecting his application to produce documents to confront plaintiff no. 1 during his cross-examination. Respondent nos. 1 to 3 are the original plaintiffs who filed the suit for the cancellation of three sale deeds dated 3rd April 2012 and the deed of rectification dated 10th April 2012 executed by defendant no. 1 as a constituted attorney of the plaintiffs, in favour of defendant no. 2. The plaintiffs also prayed for a decree of injunction restraining the defendants from obstructing the plaintiffs' possession of the suit property and creating any third-party interest in the suit property. Respondent no. 2 is the original defendant no 2.

Submissions on behalf of the petitioner ('defendant no.1'):

2. Learned counsel for the petitioner ('defendant no.1') submitted that the plaintiffs have alleged that, based on a

cancelled power of attorney, defendant no. 1 got three sale deeds and one correction deed executed in favour of defendant no. 2. Defendant no. 1 filed the written statement and contended that the registered power of attorney was for consideration and an amount of Rs. 5 Lakhs was paid to plaintiff nos. 1 and 2, and receipts were issued in the name of plaintiff no. 1. Defendant no. 1 had filed an application below Exhibit 113 for amendment of the written statement to add pleadings regarding the particulars of cash vouchers and the amount of consideration. The application was rejected as the trial had commenced, and the suit was posted for the cross-examination of plaintiff no. 1. Thereafter, defendant no. 1 filed an application to produce the receipts as per the list in evidence to confront plaintiff no. 1 during his cross-examination.

3. Learned counsel for defendant no.1 submitted that defendant no. 1 has pleaded in paragraphs 22 and 24 of the written statement regarding payment made towards the consideration amount. Since the receipts were not available with defendant no. 1 at the time of filing the written statement, the particulars of the receipts were not pleaded,

and the receipts were not produced. However, in view of the pleadings regarding the payment of the consideration amount to the plaintiffs, defendant no. 1 was entitled to confront plaintiff no. 1 with the receipts during his cross-examination. Hence, defendant no. 1 is entitled to produce the receipts in evidence to confront plaintiff no. 1 during his cross-examination.

4. To support his submissions, learned counsel for defendant no. 1 relied upon the decision of the Hon'ble Apex Court in *Mohammed Abdul Wahid Vs Nilofer and another*¹. He submits that so long as the document is produced for the limited purpose of the effective cross-examination or to refresh the memory of the witness, and the document is not foreign to the pleadings made, such production of the document during the cross-examination can be permitted. He submits that it is a well-established legal principle that procedural rules are handmaid of justice and cannot be applied with a hyper technical approach, and thus the trial court should have permitted defendant no. 1 to produce the documents in evidence for confronting plaintiff no. 1 in the cross-examination.

1 (2024) 2 SCC 144

Submissions on behalf of respondent nos. 1 to 3 ('plaintiffs'):

5. Learned counsel for respondent nos. 1 to 3 ('plaintiffs') submitted that since defendant no. 1 has not produced the documents as per Order VIII Rule 1A(1) of the CPC, he cannot confront plaintiff no. 1 with the documents during the cross-examination. He can confront the witness only if Order VIII Rule 1A(3) is complied with. He relied upon the decision of this Court in ***Laxmikant Sinal Lotlekar Vs Raghuvir Sinal Lotlekar***². In the said decision, while dealing with the unamended provisions of the CPC, this court held that the true and correct interpretation of Order XIII, Rule 2(2) of the CPC is that the only documents which can be produced in cross-examination are those which are outside the case of each of the parties and those meant to refresh the witness's memory. It is held that reading together Rule 18 (2) and Rule 1(6) of Orders VII and VIII, respectively, it would appear that the expression 'subsequent to the filing of the plaint', occurring in sub-rule (6) of Rule 1 of Order VIII, gives the key to the problem and indicates that what the legislature meant is that, if a plaintiff advances something new after the filing of the plaint, or if a defendant does so after the filing of the

2 1984 SCC Online Bom 228

written statement, his adversary in the suit will be entitled to confront him with a document concerning the new case advanced by him. According to the learned counsel for the plaintiffs, it is further held that the documents which can be introduced in evidence by way of cross-examination are those not intended to prove the original case of a plaintiff or a defendant as set out in the plaint or written statement.

6. Learned counsel for the plaintiffs also relied upon the decision of this Court in ***Rekha Nalavade Vs The Municipal Commissioner of Greater Mumbai and others***³. He submits that this Court relied upon the legal principles settled in ***Laxmikant Sinal Lotlekar*** and, with reference to the amended Order XIII Rule 1(1) of CPC and Order VIII Rule 1A of CPC, disapproved the trial court's findings based on the photographs produced on record by confronting the co-defendant's witness in the cross-examination.

7. Learned counsel for the plaintiffs referred to the 2002 amendments to the CPC and the provisions prior to the amendments. He submitted that leave as per the amended Rule 14 (3) of Order VII is necessary to produce a document at the time of hearing of the suit. The amended Rule (1A) of

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Order VIII requires the defendant to produce documents upon which relief is claimed or relied upon by him, along with a list, and shall produce them in the court when the written statement is presented. Any such document, if not so produced, can be received in evidence at the time of hearing of the suit only with the leave of the court. In the present case, since the defendant has not produced the documents he could have produced under Order VIII Rule (1A)(1), he is not entitled to confront the plaintiff with them in the cross-examination. In view of the amended provisions of the CPC, the defendant can confront the witness in the cross-examination only if Order VIII Rule (1A)(3) is complied with.

8. Learned counsel for the plaintiff submits that Rule 2 (2) of Order XIII of the unamended CPC, permitting production of documents at a subsequent stage by showing good cause for non-production under Rule 1 of Order XIII, is now deleted by the 2002 amendments. Under the amended Order XIII, the parties must produce all documents in original before the settlement of issues, where the copies are filed along with the plaint or written statement. The court can receive such documents, provided they are produced along with an

accurate list. He therefore submits that the proposition laid down in *Laxmikant Sinal Lotlekar* with reference to the unamended Orders VIII and XIII would also apply to the amended provisions, that only documents outside the case of the parties can be confronted in the cross-examination. If any document within the scope of the case of the parties that is to be produced in their respective evidence is permitted to be confronted during the cross-examination, all other provisions would be rendered nugatory. According to the learned counsel for the plaintiffs, the question for consideration in the Apex Court's decision in *Mohammed Wahid* was different and would not apply to the facts of the present case. He submits that the Apex Court was deciding the reference on the point whether a party to a suit is also a witness with reference to the interpretation of the provisions of Order VII Rule 14 and Order VIII Rule 1-A(4)(a) and Order XIII Rule 1(3)(a) of the CPC.

Consideration and Analysis:

9. The plaintiffs have pleaded that the suit property was originally owned by Dhondabai Janku Timgere, who gifted it to the plaintiffs by a gift deed dated 5th July 2004. The

plaintiffs have pleaded that, by misusing a cancelled power of attorney, defendant no. 1 fraudulently obtained three sale deeds and one deed of rectification executed in favour of defendant no. 2, without any consideration or possession.

10. Defendant no. 1 filed his written statement and denied the suit claim. He pleaded that the consideration amount of Rs. 5 Lakhs was paid to plaintiff nos. 1 and 2, and receipts were issued in the name of plaintiff no. 1. Defendant no. 1 had filed an application below Exhibit 113 for amendment of the written statement to add pleadings regarding the particulars of the receipts. The application was rejected as the trial had commenced, and the suit was for the cross-examination of plaintiff no. 1. Thereafter, defendant no. 1 filed an application to produce the receipts in evidence during the cross-examination of plaintiff no. 1. This application was rejected by the impugned order.

11. In *Mohammed Wahid*, the Hon'ble Apex Court decided the controversy whether the phrase plaintiff's/defendant's witness exclude the plaintiff or defendant themselves, when they appear as witnesses in their own cause and whether Order VII Rule 14, Order VIII Rule 1-A and Order XIII Rule 1

prohibits the party undertaking cross-examination of a party to a suit from producing documents, for the purposes thereof, by virtue of the use of the phrase(s) plaintiff/defendant's witness or witnesses of the other party, when cross-examining the opposite party. The appeal before the Apex Court was filed to challenge the decision of the Division Bench of this Court while answering the reference on the conflict of decisions on the issue of the difference, if any, between the party to a suit and a witness in a suit on the one hand and, also with respect to when it may be permissible to produce documents directly at the stage of the cross-examination.

12. The view taken by the Division Bench of this Court in answering the reference holding that a party cannot be equated to a witness is overruled by the Hon'ble Apex Court, by holding that witnesses and parties to a suit, for the purposes of adducing evidence, either documentary or oral, are on the same footing.

13. On the second question, as to whether Order VII Rule 14, Order VIII Rule 1-A and Order XIII Rule 1 prohibit the party undertaking cross-examination of a party to a suit from

producing documents, the Apex Court observed in paragraph 37 that *“it is a settled law that what is not pleaded cannot be argued, as for the purposes of adjudication, it is necessary for the other party to know the contours of the case it is required to meet. It is equally well settled that the requirement of having to plead a particular argument does not include exhaustively doing so.”*

14. The Apex Court discussed the provisions of Orders VII, VIII and XIII of the CPC, requiring the plaintiff and the defendant to produce before the court the documents upon which they seek to place reliance, and the exemption from this obligation provided for the limited purpose of cross-examination or to jog the memory of a witness. It is held that there is no difference between a party to a suit as a witness and a witness simpliciter, and that the production of documents for both a party to the suit and a witness, as the case may be, at the stage of cross-examination is permissible under law.

15. The Hon'ble Apex Court thus held that the Court has to look into the substance and therefore, in reference to the production of documents, so long as the document produced

for the limited purpose of effective cross-examination or to jog the memory of the witness is not completely divorced from or foreign to the pleadings made, the same cannot be disallowed.

16. Thus, the argument raised by the learned counsel for the plaintiffs that defendant no. 1 in the present case cannot be permitted to confront plaintiff no. 1 with the document during cross-examination, as it is not outside the case of the parties, has no substance. In view of the legal principles settled by the Apex Court in the decision of ***Mohammed Wahid***, as discussed above, it is clear that, so far as the document produced for confronting a witness in the cross-examination is not foreign to the pleadings, production of such a document for confrontation is permissible.

17. The observations in paragraph 6 of the judgment of this Court in ***Laxmikant Sinal Lotlekar*** that “.... *In my opinion, the true and correct interpretation of Order XIII, Rule 2(2) Civil Procedure Code is that the only documents which can be produced in cross-examination are those which are outside the case of each of the parties and those meant to refresh the witness’s memory.....*”, cannot be read out of context.

The said decision dealt with the unamended provisions of the CPC. The propositions laid down in ***Laxmikant Sinal Lotlekar*** are based on the discussions in said decision on Rule 18 of Order VII, which is deleted, Rule 1 of Order VIII, which is substituted, and Rule 1A is inserted and Rule 2 of Order XIII, which is also deleted by the 2002 amendments. In the decision of this Court in ***Rekha Nalavade***, relied upon by the learned counsel for the plaintiffs, this Court reversed the trial court's findings based on photographs produced during the cross-examination of a witness examined by a co-defendant who had no adverse interest. Hence, the said decision is not relevant to deciding the controversy in the present case. Although this Court referred to the decision in ***Laxmikant Sinal Lotlekar***, it held that the provisions of Order XIII and VIII would indicate that the parties are required to produce on or before the settlement of issues all documentary evidence except the documents which are produced for the cross-examination of a witness of the other party.

18. The CPC is a procedural law that governs the production of documents, while the Indian Evidence Act, 1872 ("Evidence Act") contains the substantive provisions

governing the recording of evidence. The relevant provisions governing the production of documents are found in Orders VII, VIII, and XIII of the CPC. In view of sub-rule (1) of Rule 14 of Order VII, the documents on which the plaintiff relies and which are in his possession and power must be entered by him in a list and produced at the time of filing the plaint. Any document which is not produced as provided under sub-rule (1) of Rule 14 of Order VII can be received in evidence on behalf of the plaintiff with leave of the court, by taking recourse to sub-rule (3) of Rule 14 of Order VII. The sub-rule (4) of Rule 14 of Order VII provides for an exception and permits the production of a document that was not produced as provided under sub-rules (1) and (3) of Rule 14 of Order VII, if such a document is produced for the cross-examination of the plaintiff's witnesses or handed over to a witness merely to refresh his memory.

19. In view of sub-rule (1) of Rule 1A of Order VIII, the documents on which the defendant relies in support of his defence or claim for set-off or counter-claim and which are in his possession and power must be entered by him in a list and produced at the time of filing the written statement. Any

document which is not produced as provided under sub-rule (1) of Rule 1A of Order VIII can be received in evidence on behalf of the defendant with leave of the court, by taking recourse to sub-rule (3) of Rule 1A of Order VIII. The sub-rule (4) of Rule 1A of Order VIII provides for an exception and permits the production of a document that was not produced as provided under sub-rules (1) and (3) of Rule 1A of Order VIII, if such a document is produced for the cross-examination of the plaintiff's witnesses or handed over to a witness merely to refresh his memory.

20. In view of the sub-rule (1) of Rule 1 of Order XIII, the parties shall produce on or before the settlement of issues all the documentary evidence in original where the copies thereof have been filed along with the plaint or written statement. In view of sub-rule (2) of Rule 1 of Order XIII, the court is empowered to receive such documents provided they are accompanied by an accurate list thereof prepared in the prescribed form. The sub-rule (3) of Rule 1 of Order XIII again provides for an exception and permits the production of a document that was not produced as provided under Rules 1 and 2 of Order XIII, if such a document is produced for the

cross-examination of the witnesses of the other party or handed over to a witness merely to refresh his memory.

21. Therefore, the law to produce documentary evidence by a party at the relevant stage as provided under the Orders VII, VIII and XIII provides for an exception permitting production of a document for cross-examination of the witness of the other party or to refresh the memory of a witness, even if that document was not produced at the time of filing the plaint or written statement or at the time of settlement of issues, provided such a document is relevant for the cross-examination of the witness as set out in Section 145 of the Evidence Act.

22. The rules governing the examination of witnesses are set out in Chapter X of the Evidence Act. For the purpose of deciding the controversy in the present case, it would be necessary to understand Section 145 of the Evidence Act, which reads as under:

“145. Cross-examination as to previous statements in writing. - A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without

such writing, being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. ”

23. The corresponding Section 148 of the Bharatiya Sakshya Adhiniyam 2023 (“BSA”) also reads the same, and there is no change. The object of the procedural rules provided under the CPC that govern the production of documents and the relevant law for cross-examination of a witness, as provided under Section 145 of the Evidence Act and the corresponding Section 148 of the BSA, is to ensure a fair trial. The object and purpose of these rules appear to be for a fair and disciplined method to produce the documents so that they are made known to the other party well in advance of the commencement of the trial, and not put the other party to surprise. However, the procedures under the CPC that govern the production of documents also carve out exceptions permitting a party to produce a document for the cross-examination of a witness of the other party or to hand

over a document to a witness to refresh memory, thereby supporting a fair adjudication of the dispute.

CONCLUSIONS:

24. The CPC is a procedural law that governs the procedure to be followed in civil suits, appeals, revision applications, review applications, etc., by our civil courts. The CPC does not deal with substantive evidence to be adduced in suits. Whereas the Evidence Act and the BSA are substantive laws that deal with evidence. It also contains the procedural aspects, such as the order of production and examination of witnesses, as provided in Section 135 of the Evidence Act (Section 140 of the BSA).

25. Rule 14 of Order VII and Rule 1A of Order VIII contain procedural provisions laying down the requirement of production of documents which are relied upon in the pleadings, which are in possession of the parties to the suit. The requirement is to produce such documents with a plaint or a written statement. The sub-rule (3) of both provisions states that if such documents are not produced with the pleadings, they can be received in evidence only with the Court's permission. The sub-rule (4) of both these provisions

provides that the requirement to produce the documents along with the pleadings, or only with the leave of the Court later on, does not apply to documents required for cross-examination. In other words, the documents required for cross-examination need not necessarily be produced with the pleadings, and their production does not require leave of the Court.

26. Section 145 of the Evidence Act (Section 148 of the BSA) permits a party to cross-examine the witnesses by contradicting them with the previous statement of the witnesses made in writing. This can be done only if the previous statement is relevant to the matters in question in the proceedings in which the evidence is being recorded. Therefore, the Court must allow a party to contradict a witness by showing him his previous statement, which was not produced earlier, provided it is relevant to the matters in question. After a party is allowed to contradict a witness by showing his previous statement in writing, the settled practice consistently followed by the Civil Courts in our State requires that the document be marked as an exhibit. Therefore, the document must be taken on record, and for doing so, leave

of the Court is not required. Therefore, the Court recording the evidence must permit a party to produce a document for cross-examination of the witness or to hand over a document to refresh the witness's memory, on the touchstone of Section 145 of the Evidence Act (Section 148 of BSA).

27. In view of the well-established legal principles by the Hon'ble Apex Court in *Mohammed Wahid*, as discussed above, the observations in the decision of *Laxmikant Sinal Lotlekar* cannot be read as a binding precedent to hold that no document that is meant to prove the original case can be permitted to be produced in the cross-examination of a witness of the opposite party, if it is not produced while filing the plaint, written statement or at the time of settlement of issues. Hence, the arguments made by the learned counsel for the plaintiffs, relying upon the decision in *Laxmikant Sinal Lotlekar*, cannot be accepted.

28. In the present case, the defendant has pleaded about payments made to the plaintiffs. Thus, the documents sought to be produced during the cross-examination of plaintiff no.1 for confronting him with the documents would fall under the law governing the cross-examination of a witness as

provided under Section 145 of the Evidence Act (Section 148 of BSA), read with the exceptions provided under the procedural law for production of documents under the CPC as discussed in the preceding paragraphs.

29. There is no substance in the submissions made on behalf of the plaintiffs that, because the defendant no.1's application to amend the written statement to add particulars of the payment receipts was rejected, he would not be entitled to produce the documents at the time of cross-examination. The documents sought to be produced to confront plaintiff no. 1 cannot be said to be divorced from or foreign to the pleadings, as the written statement contains the pleadings regarding payments made to the plaintiffs, and the dispute involved in the suit pertains to the payments towards the consideration amount of the sale deeds under challenge.

30. The production of a document during the cross-examination of a witness is governed by the exceptions provided under Orders VII, VIII, and XIII of the CPC and must be dealt with in the context of Section 145 of the Evidence Act (Section 148 of BSA). The Hon'ble Apex Court in

Mohammed Wahid has clarified in paragraph 39 that the documents that are not divorced from or foreign to the pleadings made can be permitted to be produced during the cross-examination of a witness, for the effective cross-examination, or to jog the memory of the witness. Hence, in view of the exceptions provided under the procedural law for production of documents under the CPC and Section 145 of the Evidence Act (Section 148 of BSA), I do not see any impediment in permitting defendant no. 1 to produce the documents as per the list at Exhibit 118 produced along with the application at Exhibit 117 for cross-examination of plaintiff no. 1.

31. The defendant was not required to file a separate application for the production of documents, in as much as he is entitled to produce the documents to confront the witness of the other party, i.e. plaintiff no. 1 at the time of cross-examination, by relying upon the exceptions provided under the Order VIII and XIII of the CPC, as discussed in the preceding paragraphs, and in view of the principles set out in Section 145 of the Evidence Act (Section 148 of BSA). Thus, filing a separate application by defendant no. 1 to produce

the documents after commencement of the cross-examination of plaintiff no. 1 is to exercise the right to confront plaintiff no. 1 with the documents, which is permissible under the law as discussed in the above paragraphs.

32. For the reasons recorded above, the writ petition is allowed by passing the following order:

(a) The impugned order dated 8th December 2021, passed by the 2nd Joint Civil Judge, Senior Division, Khed, Rajgurunagar, below Exhibit 117 in Special Civil Suit No. 385 of 2014, is quashed and set aside.

(b) The Trial Court shall permit defendant no. 1 to produce the documents as per the list at Exhibit 118, filed along with the application at Exhibit 117, to confront plaintiff no. 1 during his cross-examination.

[GAURI GODSE, J.]